COUR INTERNATIONALE DE JUSTICE

MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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(NICARAGUA c. HONDURAS)

VOLUME I

Requête; mémoire; contre-mémoire

INTERNATIONAL COURT OF JUSTICE

PLEADINGS, ORAL ARGUMENTS, DOCUMENTS

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Volume I. Requête introductive d'instance du Nicaragua; mémoire du Honduras; contre-mémoire du Nicaragua; demande en indication de mesures conservatoires du Nicaragua.

Volume II. Procédure orale; documents présentés à la Cour après la fin de la procédure écrite; correspondance.

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The case concerning *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, which was entered on the Court's General List on 28 July 1986 under Number 74, was the subject of a Judgment delivered on 20 December 1988 concerning the jurisdiction of the Court and the admissibility of the Application (*Border and Transborder Armed Actions (Nicaragua v. Honduras), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1988*, p. 69). Following discontinuance by the Applicant Government, the case was removed from the list by an Order of the Court of 27 May 1992 (*Border and Transborder Armed Actions (Nicaragua v. Honduras), Order of 27 May 1992, I.C.J. Reports 1992*, p. 222).

The pleadings and oral arguments in the case are being published in the following order:

Volume I. Application instituting proceedings of Nicaragua; Memorial of Honduras; Counter-Memorial of Nicaragua; request for the indication of provisional measures of Nicaragua.

Volume II. Oral Arguments; Documents submitted to the Court after the closure of the written proceedings; Correspondence.

In internal references, bold Roman numerals are used to refer to Volumes of this edition. The pagination and the cross-references in the pleadings and in the verbatim records of the hearings have been altered consequently.

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REQUÊTE INTRODUCTIVE D'INSTANCE PRÉSENTÉE PAR LE GOUVERNEMENT DU NICARAGUA

APPLICATION INSTITUTING PROCEEDINGS SUBMITTED BY THE GOVERNMENT OF NICARAGUA

MINISTERIO DEL EXTERIOR,
MANAGUA,
NICARAGUA.

25 July 1986.

To the Registrar of the International Court of Justice, the undersigned being duly authorized by the Republic of Nicaragua and being the Ambassador of the Republic of Nicaragua accredited at The Hague:

I have the honour to refer to the provisions of Article XXXI of the Pact of Bogotá and to the Declarations made by the Republic of Nicaragua and by the Republic of Honduras respectively, accepting the jurisdiction of the Court as provided for in Article 36, paragraphs 1 and 2, respectively of the Statute of the International Court of Justice and, by virtue of the consent to the jurisdiction based upon those instruments, either jointly or separately, to submit, in accordance with Article 40 of the Statute and Article 38 of the Rules of Court, an Application instituting proceedings in the name of the Republic of Nicaragua against the Republic of Honduras on the following grounds:

I. STATEMENT OF FACTS

1. The Somoza Regime was overthrown by revolutionary forces in July 1979, and a new Government was installed in Nicaragua.

2. Members of the military and paramilitary forces of the deposed government fled to neighbouring countries. Many of these ex-national guardsmen sought refuge in Honduras from whence they launched armed attacks against the territory of Nicaragua.

3. At first, these armed attacks consisted of sporadic forays into Nicaraguan territory with the object of rustling cattle and pillaging peasant communities.

4. In the course of 1980, the attacks became more frequent and acquired a more political and military objective. Government installations were destroyed and military patrols ambushed. At the time Nicaragua was in the midst of a literacy campaign that involved hundreds of thousands of people, mostly young students. They became targets of the armed bands and many were murdered or kidnapped.

5. All of these activities were reported to the Honduran Government by means of diplomatic notes immediately.

6. In 1981, the character and the composition of the armed bands started to change. They were better equipped and trained: their organization became more of a military nature and the size of the armed bands increased. It was becoming apparent to the Nicaraguan Government that they could not operate with such freedom without the complicity or at least the indifference of the Honduran authorities.

7. On April 19, 1981, Nicaraguan border patrols captured two members of the Honduran armed forces inside Nicaraguan territory. They confessed that the purpose of their mission was to gather intelligence information to be used by the armed bands attacking Nicaragua.

8. These activities were the object of strong protest notes by the Nicaraguan Government to the Honduran authorities.

9. On May 13, 1981, the Head of State of Nicaragua met with the President of Honduras in the border post of El Guasaule. At that meeting the Honduran authorities made commitments to help stop the armed incursions into Nicaragua made both by the somocista armed bands and by elements of the Honduran army.

10. Unfortunately, the commitments made in the meeting of Heads of State were ignored by the Honduran authorities.

11. By the end of 1981 and the beginning of 1982, the armed attacks increased to such an extent in the Nicaraguan territory bordering Honduras that much of the civilian population in that area had to be evacuated.

12. This situation led the Nicaraguan Government to request an urgent meeting of the Security Council of the United Nations on April 1982. On that occasion the United States vetoed a resolution concerning questions of principle.

13. Since 1982 to the present, the attacks from Honduras have consistently increased. The armed bands, that generally became known as the *contra* forces, are openly based in Honduran territory and have increased in size to more than 15,000 men.

14. Public statements by Honduran authorities at the highest level confirm that the *contra* forces operate with the knowledge and assistance of the Honduran Government.

15. President José Azcona Hoyos of Honduras stated in a press conference in April 1986, that the Government of Honduras could withdraw the *contras* from Honduran territory and that they had "the capacity of doing it immediately".

16. The President of the Honduran Congress has publicly acknowledged that the *contras* are based on Honduran territory and that this is done in order to back the struggle against the "Marxist-Leninists of Nicaragua".

17. The *contra* forces operate in such an open fashion in Honduras and in such numbers, that the ex-Rector of the National University of Honduras, Dr. Arturo Jorge Reina, has stated that in Honduras "there are three armies: the Honduran, the United States army, and the army of the Nicaraguan *contras*".

18. United States government officials, among them the Secretary of Defense, have made public statements to the effect that the *contra* forces operate inside Honduras with the Honduran authorities' knowledge and tolerance.

19. Apart from aiding and abetting the *contras*, the Honduran military forces have directly participated in military attacks on Nicaragua and have given vital intelligence and logistical support to the *contras*. Some examples of these acts are:

- April 4, 1982: three squadrons of the Honduran army from the military company stationed in the border area of "El Guasaule" in full army uniform penetrated Nicaraguan territory in the area of "La Ceiba", situated 5 kilometres west of Somitillo, and proceeded to kidnap 21 peasants from that sector. The peasants were taken to the Honduran city of Choluteca.
- June 5, 1983: in the sector called "El Porvenir", situated 16 kilometres northeast of Jalapa, Nicaragua, a force of about 600 *contras* penetrated Nicaraguan territory with protective cover fire of cannon and mortar from the Honduran army. Members of the Honduran army took part with

the *contra* force in the incursion into Nicaraguan territory. Twenty Nicaraguans lost their lives in this operation.

- October 3, 1983: the Nicaraguan army downed a military airplane that was transporting military supplies to the *contras* in the sector of "Los Cedros", 25 kilometres north of the Rio Blanco, inside Nicaragua. The aircraft was a Douglas DC-3C that had taken off from the airstrip "El Aguacate", in Catacamas, Department of Olancho, in Honduras. The aircraft was piloted by ex-army officers of the Somoza guardia nacional. Three of them were captured, and confessed the assistance given by the Honduran army.
- February 3, 1984: four aircraft of the Push and Pull type approached from Honduran territory and attacked a military unit of the Nicaraguan army in the sector of Manazanillo, Department of Chinandega. The airplanes withdrew after the attack into Honduran territory.
- April 18, 1985: three combat planes of the Honduran airforce attacked and sank a Nicaraguan coast guard boat 10 miles southwest of Cape Gracias a Dios in Nicaragua's sovereign and jurisdictional waters. This attack left one dead and one missing.
- March 14, 1986: three detachments of *contras* of approximately 60 men each, made an incursion into Nicaraguan territory in the sector of the border pass of La Fraternidad, located on the Pan-American highway. The attack was against the Nicaraguan customs house. The Honduran army gave support fire to the attack with mortars and rifles.

20. The Honduran Government has also used the threat of force against Nicaragua not only in words but also in facts. Since 1981 they have constructed military airports, naval bases and other military infrastructure along the border with Nicaragua, and have continuously held manœuvres with the United States Army with the express object of intimidating Nicaragua.

II. Legal Grounds on Which the Claim Is Based

21. On the basis of the above statement of facts, Nicaragua claims that Honduras has incurred legal responsibility for the breach of major obligations arising under the United Nations Charter and other multilateral treaties, and also from the breach of certain well-established obligations of customary international law. The particular legal grounds on which Nicaragua bases its claims are as follows.

1. Breaches of the Charter of the United Nations

22. The facts on which Nicaragua relies disclose serious and persistent violations of the provisions of the United Nations Charter, Article 2, paragraph 4, according to which all Members of the United Nations shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State. The conduct of Honduras (as described above) involves both the use of force and the threat of force. In particular both the direct attacks by elements of the Honduran armed forces and the assistance provided to the somocista armed bands in their attacks on the territory of Nicaragua and its civilian population constitute the use of force against Nicaragua. In addition, the Government of Honduras by means of military manœuvres and associated activities in conjunction with the armed forces of the United States has used the threat of force against Nicaragua.

2. *Breaches of the Charter of the Organization of American States*

23. The acts of Honduras (as described above) constitute serious and persistent violations of the provisions of Article 18 of the Charter of the Organization of American States, according to which Honduras is under the obligation not to intervene directly or indirectly for any reason whatsoever in the internal or external affairs of Nicaragua, whether by armed force or by any other form of interference or attempted threat against the personality of Nicaragua or against its political, economic or cultural elements.

24. The acts of Honduras also involve serious and persistent violations of the provisions of Article 20 of the Charter of the Organization of American States, according to which the territory of Nicaragua is inviolable and must not be subjected to military occupation or other forcible measures, directly or indirectly, on any grounds whatever.

3. *Breaches of the American Treaty for the Peaceful Settlement [of Disputes] (Pact of Bogotá)*

25. The acts of Honduras (as described above) constitute further serious and persistent violations of the provisions of Article I of the American Treaty for the Peaceful Settlement of Disputes ("Pact of Bogotá"), according to which Honduras is under an obligation to abstain from the threat or use of force, or any coercion, as a means of settling disputes.

4. *Breaches of the Obligation of Customary International Law Not to Intervene in the Affairs of Another State*

26. A significant element in the conduct of Honduras in the relevant period (as described above) has been the pattern of assistance to and toleration of the violent actions of armed bands of somocistas operating against Nicaragua from bases within Honduras. The conduct of Honduras in this respect involves serious and persistent violations of the well-established obligation of customary international law not to intervene in the affairs of Nicaragua. The serious character of the violations is enhanced by the publicly proclaimed objective of the *contras* and their supporters in Honduras to overthrow the Government of Nicaragua.

5. *Breaches of the Obligation of Customary International Law Not to Use Force against Another State*

27. The policy of assistance to the armed bands of somocistas adopted by Honduras involves breaches of the obligation of customary international law not to use force against another State: and so also the direct attacks against Nicaragua by the armed forces of Honduras constitute serious breaches of this same obligation.

6. *Breaches of the Obligation of Customary International Law Not to Violate the Sovereignty of Another State*

28. The direct attacks carried out against Nicaragua by the armed forces of Honduras (as described above) constitute breaches of the obligation not to violate the sovereignty of another State. Moreover, certain attacks have involved the brutal kidnapping of Nicaraguan citizens by Honduran armed forces, as, for example, during the incursion by Honduran forces on April 4, 1982.

7. *Breaches of the Obligation of Customary International Law Not to Kill, Wound or Kidnap the Citizens of Other States*

29. The conduct of Honduras (as described above) constitutes serious and persistent breaches of the obligation under customary international law not to kill, wound or kidnap the citizens of other States.

III. THE NATURE OF THE CLAIM

30. On the basis of the foregoing statement of facts and considerations of law, Nicaragua, reserving the right to supplement or to amend this Application and subject to the presentation to the Court of the relevant evidence and legal argument, requests the Court to adjudge and declare as follows:

(a) that the acts and omissions of Honduras in the material period constitute breaches of the various obligations of customary international law and the treaties specified in the body of this Application for which the Republic of Honduras bears legal responsibility;

(b) that Honduras is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

(c) that Honduras is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions.

31. Nicaragua reserves the right to present a request that the Court indicate interim measures of protection.

32. The Government of Nicaragua has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Embassy of the Republic of Nicaragua, The Hague, Wattstraat 19.

Respectfully submitted,
(Signed) Carlos ARGÜELLO GÓMEZ,
Agent of the Republic
of Nicaragua.

MÉMOIRE DU HONDURAS
(COMPÉTENCE ET RECEVABILITÉ)

MEMORIAL OF HONDURAS
(JURISDICTION AND ADMISSIBILITY)

Volume I

INTRODUCTION

1. On 28 July 1986, the Republic of Nicaragua filed an Application in the Registry of the Court instituting proceedings against the Republic of Honduras regarding an alleged dispute between the two States. In order to found the jurisdiction of the Court the Application referred to the provisions of Article XXXI of the Pact of Bogotá and the declarations made by the Republic of Nicaragua and by the Republic of Honduras, respectively, and to Article 36 (1) and 36 (2) of the Statute of the International Court of Justice and relied on consent to the jurisdiction based upon those instruments, either jointly or separately.

2. By a note of 29 August 1986 (Ann. 42), filed in the Registry of the Court, the Minister of Foreign Relations of the Government of Honduras appointed the undersigned as its agent in accordance with Article 40 (2) of the Rules of Court and maintained that with regard to jurisdiction the Government of Honduras considered that the Court had no jurisdiction over the matters mentioned in the Application submitted by the Republic of Nicaragua. Consequently Honduras asked the Court to confine all preliminary pleadings exclusively to the issues of jurisdiction and admissibility, in accordance with established precedent.

3. By an Order of 22 October 1986, in accordance with Article 79 of the Rules of Court, the Court laid down a time-table for submissions by the Parties regarding the questions of jurisdiction and admissibility. In accordance with that Order and within the period laid down by the Court, the Government of Honduras submits this Memorial containing the matters of fact and law upon which its objections to the jurisdiction of the Court and the admissibility of the Application filed by the Republic of Nicaragua against the Republic of Honduras on 28 July 1986 are based.

4. Nevertheless, before setting out the facts and legal arguments, the Government of Honduras wishes to point out two preliminary remarks concerning the date of Nicaragua's Application. *Firstly*, the Application was filed in the Registry of the Court on 28 July 1986, only one month after the Judgment on the merits in the case concerning *Military and Paramilitary Activities in and against Nicaragua*[1]. It seems, as will be stated later, that Nicaragua considers that the present case is simply a continuation of the previous case against the United States of America.

Secondly, it is surprising that on the day before the filing of the Application, 27 July 1986, Daniel Ortega, the President of the Republic of Nicaragua, stated in an interview with the Spanish Television Network of the United States (SIN) that "we do not have any problems with Honduras. We have problems with the United States." These declarations, a transcription of which is appended hereto as Annex 28, were also reported in the press. On that occasion, President Daniel Ortega also expressed his full support for the Contadora peace process in Central America.

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[1] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14.

If the process of peaceful settlement conducted by the Contadora Group deserves to be supported, it is certainly surprising that it should be prejudiced by Nicaragua, which submitted an Application to the Court on 28 July 1986 against Honduras and, on the same day, against Costa Rica, since both Nicaragua and the two respondent States are parties to the settlement procedures which are still being conducted by the Contadora Group. It is also surprising that the President of Nicaragua could say, on 27 July 1986, that there were no problems between his country and Honduras and that, on the following day, in complete contradiction of that statement of the Head of State, Nicaragua instituted proceedings against Honduras in the Court. This contradiction is even more flagrant when it is borne in mind that, according to Nicaragua's Application, the facts in the dispute submitted to the Court allege that Honduras is responsible for a breach of international obligations relating, *inter alia*, to non-intervention in the internal affairs of Nicaragua and to the prohibition of the threat or use of force against that State.

5. This contradictory behaviour on the part of Nicaragua is relevant in law. *Firstly*, it should be observed, as the Court accepted in its Judgment of 27 June 1986 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, that statements made by representatives of States, including those made at press conferences or in interviews and reported by the local or international press, particularly when they are made by high-ranking political figures

> "are of particular probative value when they acknowledge facts or conduct unfavourable to the State represented by the person who made them. They may then be construed as a form of admission."[1]

It should be observed that such statements are of greater weight in relation to the previous conduct of a State, if they confirm that conduct, as is the case, for example, where the non-existence of a dispute, according to a statement made by a Head of State, is confirmed by the absence of genuine prior negotiations to resolve the dispute.

Secondly, as the Court itself admitted in its Judgment of 27 June 1986, statements made by high-ranking representatives of States "may involve legal effects, some of which it has defined in previous decisions"[2].

Without reproducing these previous decisions of the Court, it should be pointed out that the legal effects of a unilateral declaration by a State, in its relations with other States, are based on good faith[3]. Consequently, in the view of the Government of Honduras, by virtue of the declaration made by the President of Nicaragua on 27 July 1986 and the previous conduct of that State in relation to Honduras, Nicaragua is precluded from invoking before the Court the existence of a dispute, such as it alleges in its Application of 28 July 1986. In any event, even if it is admitted that those circumstances do not have this juridical effect, the principle of good faith requires that Nicaragua's conduct before the Court should be considered in relation to other processes of settlement in progress, in which Nicaragua is participating together with

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[1] *I.C.J. Reports 1986*, p. 41, para. 64.

[2] *Ibid.*, p. 43, para. 71.

[3] *Nuclear Tests (Australia v. France), Judgment of 20 December 1974, I.C.J. Reports 1974*, p. 268, para. 46.

Costa Rica and Honduras, and in relation to the previous case between Nicaragua and the United States of America. As will be explained below, all these circumstances show the artificial nature of Nicaragua's present Application. In the view of the Government of Honduras, the Court should refrain from exercising its judicial function in these proceedings.

6. The structure of this Memorial is relatively simple. Part I provides the background of the dispute and consists of two chapters. The first chapter places the present dispute within the wider, general conflict in Central America. It demonstrates that it is the internal conflict within Nicaragua itself which lies at the origin of what is now a generalized, international conflict; and that this widening of the conflict results from Nicaragua's own conduct towards its neighbours. Honduras itself has suffered from many, many military invasions of its territory by Nicaraguan forces. There have been attempts to resolve this conflict, at a bilateral level initially, and then at a multilateral level, via the OAS and continued, from 1983 onwards via the Contadora process resulting from the initiative of the Foreign Ministers of the Contadora Group. The Contadora process has been accepted as a "special procedure" within the meaning of Article II of the Pact of Bogotá. This special procedure involves consultation, negotiation and mediation on a multilateral basis, and it is the very antithesis of a bilateral, legal dispute. Yet Nicaragua, despite formal and binding commitment to the Contadora process, has seen fit to embark on a unilateral Application to the International Court. In this, and other ways, Nicaragua has sought to frustrate the Contadora process.

7. Chapter II analyses this unilateral Nicaraguan Application. The Application is a piece of political opportunism, filed 30 days after the Court's Judgment of 27 June 1986, and designed to make political capital out of the Judgment of the Court. It attempts to isolate from the general conflict in Central America an alleged bilateral dispute (or, indeed, two such disputes if regard is had to the similar Application against Costa Rica) and so produces a quite artificial claim. The artificial character of the claim is aggravated by its vagueness and incompleteness. These characteristics of artificiality and vagueness are in themselves grounds upon which the admissibility of the Application ought to be denied.

8. Part II of this Memorial addresses the question of the competence of the Court. The first chapter in this Part, Chapter III, examines two separate and further objections to the admissibility of the dispute. The first of these arises from the legal obligation contained in Article II of the Pact of Bogotá not to submit to the International Court (a procedure established in the Pact of Bogotá) any dispute unless, in the opinion of the parties, it cannot be settled by direct negotiations. This is a true condition precedent to any jurisdiction of the International Court, and it has not been met in the present case. The second objection to admissibility stems from the further obligation, contained in Article IV of the Pact, not to commence any other procedure (i.e., recourse to the Court) until the procedure first initiated (i.e., the special procedure of the Contadora process) has been concluded. And Contadora has *not* been concluded. To this objection, based on the express terms of Article IV, must be added an objection derived from elementary considerations of good faith, namely that Nicaragua, having accepted a binding commitment to the Contadora process, cannot now be allowed to embark upon a unilateral Application to the Court which involves different procedures, different parties, different aims and, inevitably, different results.

9. Chapter IV is concerned with objections to the jurisdiction of the Court, and Section I of this chapter examines the objections deriving from the

Statute of the Court itself. Honduras maintains that its declarations accepting the Court's jurisdiction under Article 36, paragraph 2, of the Statute of the Court are made pursuant to the obligation now assumed by Honduras under Article XXXI of the Pact of Bogotá. Thus Article XXXI of the Pact and Article 36, paragraph 2, of the Statute refer to the *same* basis of jurisdiction. It therefore follows that the current reservations of Honduras, contained in its declaration of 22 May 1986, apply for purposes of both Article 36, paragraph 2, *and* Article XXXI. And the terms of that declaration exclude from the jurisdiction of the Court the dispute alleged by Nicaragua.

It is equally clear that the "conventional" basis of jurisdiction, based on Article 36, paragraph 1, of the Statute of the Court is inapplicable in this case. For Article 36, paragraph 1, of the Statute is expressly linked to Article XXXII of the Pact of Bogotá, so that this jurisdiction would only arise where conciliation had been tried and failed, and where the parties had failed to agree on arbitration. Neither of these two conditions is met in this case.

10. Section II of Chapter IV examines the competence of the Court more from the standpoint of the provisions of the Pact of Bogotá. It emphasizes that, if there is any conflict between the Pact and the provisions of the United Nations Charter (of which the Statute of the Court is an integral part), the latter will prevail. In fact, however, there is no conflict.

The textual, and logical, interpretation of Articles XXXI and XXXII confirms the interpretation reached in Section II. That is to say, Article XXXI combines with Article 36, paragraph 2, of the Statute to produce one basis of jurisdiction; and Article XXXII is a separate treaty or conventional basis of jurisdiction, subject to satisfaction of the two prior conditions of failure of conciliation and lack of agreement to arbitrate. However, certain doctrinal writings have linked Articles XXXI and XXXII, concluding that Article XXXI is, in itself, a sufficient acceptance of the jurisdiction of the Court under Article 36, paragraph 2, of the Statute, but only when the two prior conditions of Article XXXII have been met. The discussion of "automatism", of the aim of the Pact to lead inevitably to peaceful settlement, should not lead to the assumption that the jurisdiction of the Court is inevitable. On the contrary, as Article XXXV makes clear, it is arbitration which in that sense is the ultimate, inevitable technique of settlement.

11. In any event, whichever interpretation of Articles XXXI and XXXII is adopted, the bond, or link, between Article XXXI and Article 36, paragraph 2, of the Statute is such that any reservations to the jurisdiction must apply to both. Any other construction would render a State subject to the jurisdiction under different conditions, according to whether jurisdiction is based on one instrument or the other. In the present case, in order to avoid any misunderstanding, Honduras confirmed its intention to make its new reservations of 22 May 1986 applicable equally to both the Statute of the Court and the Pact of Bogotá by expressly communicating that intention to all members of the OAS. Neither Nicaragua nor any other member State objected to that expression of intention.

This Memorial therefore concludes by listing the Honduran objections to both admissibility and jurisdiction.

PART I. THE BACKGROUND OF THE DISPUTE

CHAPTER I

THE PRESENT DISPUTE AS PART OF THE GENERAL CONFLICT IN CENTRAL AMERICA

Section I. The Causes of the Conflict in Central America

1.01. The general conflict in Central America is centred on Nicaragua, the applicant State in the present case. In the case concerning *Military and Paramilitary Activities in and against Nicaragua*, although the dispute submitted to the Court related solely to events in Nicaragua subsequent to the fall of the government of President Somoza in July 1979 and activities of the Government of the United States in relation to Nicaragua since that time[1], various aspects of the general conflict were raised before the Court. Consequently, for the purposes of this Memorial it is not necessary to set out the facts here in detail, and only certain relevant facts must be mentioned.

1.02. Firstly, it must be borne in mind that the origin of the conflict dates from before July 1979, since the fall of the government of President Anastasio Somoza was the result of an initial internal armed conflict in Nicaragua. In fact, the murder of the leader of the Nicaraguan opposition and editor of the newspaper *La Prensa*, Pedro Joaquin Chamorro, which occurred on 10 January 1978, gave rise to a wide popular movement which brought closer collaboration between various political and social forces whose general objectives were the replacement of the government of President Somoza and the installation of a democratic régime in Nicaragua.

In September 1978 the opposition to President Somoza's government openly took the form of popular insurrection in various towns and villages in Nicaragua which was strongly suppressed by the government. This insurrection inevitably produced the first effects of the internal conflict in Nicaragua on neighbouring States, since large groups of Nicaraguans who were fighting against the government of President Somoza sought refuge in Honduras, where they were welcomed not only for humanitarian reasons but also because of the profound fraternity existing among the peoples of Central America.

On that occasion, within the scope of its limited resources, Honduras provided aid for the Nicaraguan refugees in the form of accommodation, food and medical care. Later, the same humanitarian and fraternal feelings, regardless of any political considerations, induced Honduras to provide assistance of the same kind to the many persons who had sought refuge in its territory from Nicaragua after the fall of the government of President Somoza on 19 July 1979, and it should be observed here that the subsequent armed conflict in Nicaragua against the government of the Sandinista Front also generated large movements of persons from Nicaragua to Honduras. Such was the case with the mass exodus of the Miskito population of Nicaragua in 1981 and 1983, which took place in extremely difficult conditions, as has been reported by international organizations for the protection of human rights and the press (Ann. 47A and B).

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[1] *I.C.J. Reports 1986*, p. 20, para. 18.

1.03. Secondly, it must also be pointed out that while a situation of internal armed conflict directly affecting Honduras has existed in Nicaragua since 1978, a situation of civil war, which still continues at present, has also existed during the same period in El Salvador, another neighbouring State of Honduras.

The internal armed conflict in El Salvador was intensified in 1978 and the following years, coinciding with the coming to power of the government of the Sandinista Front in Nicaragua. The Court rightly stressed the importance of "the ideological similarity between two movements, the Sandinista movement in Nicaragua and the armed opposition to the present government in El Salvador", as well as "the consequent political interest of Nicaragua in the weakening or overthrow of the government in power in El Salvador" as the context of or the background to certain facts and declarations discussed in the case in its Judgment of 27 July 1986[1]. Moreover, after examining the fact regarding the traffic of arms from Nicaragua to the opposition in El Salvador, the Court held that

> "between July 1979, the date of the fall of the Somoza régime in Nicaragua, and the early months of 1981, an intermittent flow of arms was routed via the territory of Nicaragua to the armed opposition in El Salvador"[2].

1.04. Certain conclusions regarding the general conflict in Central America may clearly be drawn from the two points that have just been mentioned. *Firstly*, it may be deduced that the origin of this conflict is the successive internal conflicts which occurred in Nicaragua before and after 19 July 1979 and that this general conflict is also linked with the long internal conflict in El Salvador. *Secondly*, it may be deduced that since the government of the Sandinista Front came to power in Nicaragua the general conflict in the region has increased considerably as a result of the behaviour of Nicaragua itself towards other Central American States, as is shown by the aid afforded by the government of the Sandinista Front to the armed opposition in El Salvador immediately after the fall of the government of President Somoza, which can be seen in the passage cited above from the Judgment of the Court of 27 June 1986.

Thirdly, it may be deduced that the conflict in Central America intensified after 19 July 1979 due to the activities conducted in the region by States foreign to the region and having various ideological connections with separate armed movements fighting against certain Central American Governments. In the case concerning *Military and Paramilitary Activities in and against Nicaragua* the Court had the opportunity to examine some of the facts in relation to Nicaragua and the United States of America. However, as it admitted in its Judgment:

> "The subject-matter of the dispute also forms part of wider issues affecting Central America at present being dealt with on a regional basis in the context of what is known as the 'Contadora Process'."[3]

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[1] *I.C.J. Reports 1986*, p. 82, para. 150.
[2] *Ibid.*, p. 86, para. 160.
[3] *Ibid.*, pp. 22-23, para. 25.

It is well known that other States outside Central America having political and ideological connections with the government of the Sandinista Front have also contributed considerably to intensifying the present conflict in this region.

Fourthly, it may be deduced that the intensification and extension of the conflict in Central America have resulted in the intervention of various international bodies and, as the Court mentioned in the passage cited above, have given rise to a process of peaceful settlement of a general nature within the framework of the Organization of American States and the Pact of Bogotá, known as the "Contadora process", which, in the view of the Court itself, constitutes an effort "which merits full respect and consideration as a unique contribution to the solution of the difficult situation in the region"[1].

Section II. The Position of Honduras in the Central American Conflict

1.05. In the context of this general conflict in the region, the Application filed by Nicaragua against Honduras on 28 July 1986 constitutes a deliberate distortion of the facts in favour of the applicant State. This distortion commenced in the previous case against the United States of America and is being used also against Costa Rica.

Reference must, therefore, be made, albeit briefly, to the position of Honduras in the context of the general conflict in Central America. The following comments will enable the Court to evaluate from a wider perspective the facts and allegations set out by Nicaragua in its Application and will show that they are devoid of foundation.

1.06. At the outset, it must be borne in mind that Honduras is a neighbouring State of El Salvador and Nicaragua, i.e., the two States in which internal armed conflict has prevailed since the 1970s. Due to its geographical position in Central America, Honduras has inevitably suffered from the consequences of those two internal conflicts.

With regard to the land frontier between Honduras and El Salvador, 66 per cent of its total length is delimited by the General Peace Treaty concluded between the two States in Lima, Peru, on 30 October 1980. Regarding the remainder of the land frontier, a dispute has existed between the two States since the nineteenth century and, together with a dispute concerning islands and the maritime areas of both countries, has been submitted to the Court by El Salvador and Honduras by means of a special agreement of 24 May 1986, notified to the Court on 11 December 1986.

In various sectors of the land frontier in respect of which El Salvador and Honduras are in dispute, access is difficult and the population is small. Moreover, these sectors are demilitarized by virtue of agreements concluded between the two States after the armed conflict of 1969. In view of these facts it is understandable that the internal armed conflict in El Salvador has affected those sectors and has provoked not only movements of persons seeking refuge in Honduras but also, on occasions, incidents of a certain degree of gravity derived from that internal conflict, such as those border incidents and terrorist actions described in paragraph 1.08 (iv) below.

1.07. With regard to the land frontier between Honduras and Nicaragua, it is delimited in its entirety. It is delimited in the sector between the Gulf of

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[1] *I.C.J. Reports 1986*, p. 145, para. 291.

Fonseca, in the Pacific Ocean, to the Portillo de Teotecacinte by Agreement on the Records of the Honduran-Nicaraguan Joint Boundary Commission of 1900-1901, and from Portillo de Teotecacinte to the Atlantic Ocean, at the mouth of the River Wanks, Coco or Segovia, by the Arbitral Award of H.M. King Alfonso XIII of Spain of 23 December 1906, the validity and enforceability of which was confirmed by the Court in its Judgment of 18 November 1960[1].

In the declaration made by the Minister of Foreign Relations of Nicaragua on 24 April 1984 and submitted to the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua* the geographical difficulty of patrolling the frontier is explained as follows:

> "Nicaragua's frontier with Honduras, to the north, is 530 kilometres long. Most of it is characterized by rugged mountains or remote and dense jungles. Most of this border area is inaccessible by motorized land transport and simply impossible to patrol."

In the view of the Government of Honduras, this description is correct in general[2]. However, it must be observed, in view of these geographical circumstances in the frontier area and, in particular, in the second of the sectors mentioned above, that most of the statement of facts set out in the Nicaraguan Application against Honduras are pure speculation. Nicaragua admits, by the terms of that declaration, that grave difficulties in patrolling the frontier exist in relation to Nicaragua. Necessarily, therefore, the same difficulties must exist for Honduras.

1.08. The consequences for Honduras of being a neighbouring State of two countries in which internal armed conflict has prevailed since the seventies and of having a frontier with those States with the features that have been mentioned must be described briefly. The following aspects are those which are the most important:

(i) The conflicts in the neighbouring States have caused, at various times, the presence in Honduras of refugees from El Salvador and Nicaragua. As has already been mentioned, Honduras had to provide shelter and humanitarian assistance, without discrimination, for refugees from Nicaragua on successive occasions, irrespective of their political affiliation (Ann. 46).

(ii) After 19 July 1979 there was an illegal traffic in arms from Nicaragua to El Salvador, which the Court regarded as fully established, at least until the initial months of 1981. In view of the geographical position of Honduras, between the two States, its territory has been used, and violated, by the government of the Sandinista Front, on various occasions, to permit such traffic. An example of this was the capture on 17 January 1981, 16 kilometres from the town of Comayagua, in the centre of Honduras, of a van containing a large consignment of arms and military equipment intended for the guerrilla forces in El Salvador, which had entered Honduras at the crossing-point at El Guasaule. The consignment consisted of M-16, G-3 and FAL rifles, M-1 carbines, 50 mm machine-guns, mortar grenades, ammunition and communication equipment (Ann. 12, p. 115, *infra*, submitted to the OAS in 1983).

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[1] Case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906 (Honduras v. Nicaragua), I.C.J. Reports 1960*, p. 192.

[2] The Honduras-Nicaraguan border is more than 735 kilometres long, so here the reference of Minister d'Escoto is to the north-east sector of the border, from the El Paraiso Department of Honduras to the Atlantic Ocean.

Another example is the fact that on 7 April 1983 troops of the Eleventh Infantry Battalion of Honduras, based in Choluteca, captured another van which was carrying 7.62 mm and 55 mm ammunition and a large quantity of materials intended for the Organizacion del Pueblo en Armas (ORPA) (Armed Popular Organization) in Guatemala. The van had come from Nicaragua and had entered Honduras through the same crossing-point as that used in the previous case. However, it is obvious, in view of the conditions at the frontier, that the traffic in arms has been of much wider scope, both overland and through waters under the jurisdiction of Honduras in the Gulf of Fonseca.

(iii) Since July 1979 the Honduran territory has also been used by the government of the Sandinista Front for the passage of insurgents to El Salvador. In an incident that took place on 26 March 1983 in Las Cuevitas, in the municipality of Nacaome, in the province of Valle in the south of Honduras, after an exchange of fire, a Honduran military patrol captured a group of guerrillas on their way to El Salvador with a large quantity of military equipment. Among the documents seized were two notebooks containing information regarding the routes for the movement of persons and arms through Honduras to El Salvador (Ann. 12, p. 115, *infra*).

(iv) The internal armed conflict in El Salvador, which has been intensifying since 1978, and the support given to the guerrillas in that State by the government of the Sandinista Front since July 1979 have provoked various incidents in Honduras which have threatened public order. Persons connected with the movement opposing the Government of El Salvador and with the dominant movement in Nicaragua participated directly or indirectly in these incidents. The number of political kidnappings of persons and bank robberies between 1980 and 1982 was large. In 1980 the offices of the OAS in Tegucigalpa were occupied and a representative of the Organization was held as a hostage. Two Honduran aircraft of the SAHSA airline were hijacked in March and August 1981. The offices of the Chamber of Commerce and Industry in San Pedro Sula were attacked in September 1982 during an Economic Policy Seminar and more than 100 persons, including two Ministers, the President of the Central Bank and leading industrialists of Honduras, were held as hostages. Various installations and enterprises within the territory and abroad have been the subject of terrorist acts. The attack on the Honduran diplomatic mission in Bogotá on 14 April 1982 was particularly brutal and the Honduran consul was seriously injured. In most of these incidents and terrorist acts the internal armed conflict in El Salvador was projected into Honduras since the purpose of those actions was to obtain the release of persons connected with the guerrilla forces in El Salvador (Ann. 12, p. 116, *infra*).

(v) Certain border incidents, of a different nature, along the frontier with Nicaragua have been more serious. These incidents were reported by Honduras to the Organization of American States at the time, and related to encounters between Honduran and Nicaraguan frontier patrols, attacks on Honduran fishing vessels and the capture of such vessels, the mining, by Nicaraguan troops, of fields and rural roads on the frontier between Honduras and Nicaragua, in which persons were killed and seriously injured, attacks on Honduran helicopters over Honduran territory, an attack on a Honduran helicopter in the Gulf of Fonseca, near the coast of Nicaragua, in which eight Honduran officials and crew members were killed, and various attacks on Honduran frontier and customs posts along the frontier with Nicaragua (Anns. 48, 49, 50 and 51).

(vi) Incursions by Nicaraguan armed forces into the territory of Honduras commenced in 1979 and continued up to 1986. Some of these acts, attributable to the Government of Nicaragua, were examined by the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, and in its Judgment of 27 June 1986 the Court stated that "while not as fully informed on the question as it would wish to be", it considered as established "the fact that certain transborder military incursions into the territory of Honduras and Costa Rica" were "imputable to the Government of Nicaragua"[1]. The invasions of Honduran territory in March and December 1986 were, in this context, extremely serious (Anns. 48, 49, 50 and 51).

1.09. The above list of facts is set out solely by way of illustration. The Government of Honduras reserves the right to expand it and to submit appropriate evidence to the Court, if necessary. It has been set out in this Memorial dealing solely with the questions concerning the jurisdiction of the Court and the admissibility of the Application, firstly, because it is necessary to emphasize to the Court that, due to its geographical position, Honduras has been directly affected by the general conflict in Central America originating from the internal conflicts in the two neighbouring States, and, secondly, because, although this general conflict takes the form of incidents connected with bilateral relations between two States in the region, to treat it as a matter concerning relationships between individual States is artificial and leads inevitably to a failure to deal with the real substance of the problem, to the detriment of the proper administration of justice. It is the second consideration which Honduras would wish to emphasize and to explain fully to the Court. For this is not a case in which Honduras simply seeks to exclude from the jurisdiction of the Court a case properly brought before the Court, relying on the technicalities of its reservations to the jurisdiction. Indeed, if the objections to the jurisdiction were mere technicalities, Honduras would give serious consideration to waiving them. However, the objections of Honduras are fundamental and go to the whole question of whether this general and serious conflict can be properly and justly resolved by the prejudicial selection of components of the general problem, as if they were suitable for isolation as purely legal issues, appropriate for submission to the Court. It is for this reason that Honduras wishes to place the facts fully before the Court, so that there will be no misunderstanding of the reasons why Honduras opposes jurisdiction in this case.

1.10. Honduras is the State which is the most directly concerned to achieve a peaceful and lasting settlement of the conflict. Consequently, there will be examined here the efforts of Honduras to achieve an amicable settlement within the framework of the Organization of American States and, in particular, the so-called "Contadora process".

This examination is relevant with regard to the arguments which will be set out later concerning the jurisdiction of the Court and the admissibility of Nicaragua's Application. In fact, Nicaragua has not only endeavoured to frustrate the efforts to achieve an amicable settlement but has also suddenly decided, for political reasons, to submit two simultaneous Applications to the Court, on 28 July 1986, against Costa Rica and Honduras, which are both parties, together with Nicaragua, to the Contadora negotiations which are still in progress and which it claims to support.

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[1] *I.C.J. Reports 1986*, p. 87, para. 164.

Section III. The Peaceful Settlement of Disputes within the Framework of the OAS

1.11. The efforts to institute a system for the peaceful settlement of international disputes in America date from the nineteenth century. However, it was at the inter-American conferences of 1947 and 1948 that the system was consolidated by means of three international instruments: the Inter-American Treaty for Reciprocal Assistance of 1948, the Charter of the Organization of American States of 1948, and the Inter-American Treaty for the Peaceful Settlement of Disputes (the Pact of Bogotá) of 1948. In view of these agreements and the various resolutions adopted by the organs of the OAS in this field, it is not surprising that Sir Humphrey Waldock considered that:

> "Among the political organizations the most highly developed machinery for the settlement of disputes is that of the Organization of American States."[1]

1.12. It would undoubtedly be out of place here to set out the details of the inter-American system for the peaceful settlement of disputes. Nevertheless, it is necessary to mention certain general aspects for the purposes of the present examination.

Firstly, each of the three main instruments of the system embodies the general obligation to resolve any dispute by peaceful means contained in Article 2 (3) of the Charter of the United Nations and recognized by "customary international law"[2]. In fact, the principle is contained in Articles 3 *(g)* and 23 of the Charter of the OAS, Article I of the Pact of Bogotá and Article 2 of the Inter-American Treaty of Reciprocal Assistance.

Secondly, in the inter-American system the peaceful settlement of disputes is closely related to collective security and, as has been rightly pointed out, this relationship, "stemming from the (OAS) Charter, and the Rio Treaty, seems even greater in practice"[3]. This was made clear with regard to the general conflict in Central America with the convocation of September 1978 of the XVIIth Meeting of Consultation of Ministers of Foreign Relations, which, on 23 June 1979, adopted Resolution II relating to the situation in Nicaragua (Ann. 1), which the Court examined in earlier proceedings[4]. It has been evident in the meetings of the Ministers of Foreign Relations and in the debates that have taken place after 1979 in the Permanent Council and the Assembly of the OAS. The various resolutions relating to the Contadora peace process, from Resolution 675 (XIII-0/83) of 18 November 1983 to that adopted recently at the meeting in Guatemala in November 1986, may be mentioned as examples of that consideration by the OAS (Ann. 29).

1.13. *Finally*, the Pact of Bogotá plays a central role in the inter-American system for the peaceful settlement of disputes. In fact, it is generally accepted that the Pact of 1948 constitutes the "special treaty" mentioned in Article 26 of the OAS Charter and therefore its provisions are intended to achieve the fulfilment of the fundamental objective of the Organization that a definitive settlement of any dispute between American States should be achieved within a reasonable period.

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[1] Sir Humphrey Waldock, "The Report", in *International Disputes — The Legal Aspects*, London, 1972, p. 28.

[2] *I.C.J. Reports 1986*, p. 145, para. 291.

[3] F. V. García-Amador, in *The Inter-American System*, Vol. 1, Part II, Secretariat for Legal Affairs, General Secretariat of the OAS, London/Rome/New York, 1983, p. 209.

[4] *I.C.J Reports 1986*, p. 131, paras. 260 *et seq.*

However, the Pact of Bogotá contains a special provision with regard to the settlement procedures that may be used by the parties to a dispute. By Article II, if a dispute cannot be settled by negotiation through diplomatic channels, the parties to the Pact undertake "to use the procedures established in the present treaty" (good offices, mediation, investigation, conciliation, judicial or arbitral procedures). However, recourse to other procedures for peaceful settlement is permitted, since the parties to the dispute may adopt "alternatively such *special procedures* as, in their opinion, will permit them to arrive at a solution" (emphasis added).

This wide scope with regard to recourse to various settlement procedures is combined with the principle of freedom of choice embodied in Article III. However once the parties have chosen a settlement procedure governed by the Pact of Bogotá or a special procedure, the principle laid down in Article IV applies and prohibits the adoption of any other method:

> "Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfilment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded."

As will be explained later, these provisions are juridically relevant with regard to the jurisdiction of the Court in the present case, since Nicaragua is invoking provisions of the Pact of Bogotá.

Section IV. The Efforts to Achieve Peaceful Settlement of the Conflict: from Bilateral to Multilateral Procedures

1.14. As has been mentioned above, the conflict in Central America intensified after July 1979, when the government of the Sandinista Front came to power in Nicaragua, and because of the behaviour of that government and the geographical position of Honduras, the serious consequences of the conflict began to be felt in Honduras.

In order to eliminate these consequences and to strengthen peace in the region, between 1979 and 1982 Honduras conducted various diplomatic negotiations with Nicaragua which should be mentioned. However, from 1982, with the extension of the conflict and the increase in tension in the region, Honduras proposed a general procedure for a settlement, with the participation of all the States of Central America. This initiative was the origin of the Contadora peace process.

1.15. Nicaragua refers in point 9 of its Application to the meeting held at the Guasaule frontier-post on 13 May 1981 between the President of Honduras, General Policarpo Paz García, and the Co-ordinator of the Junta for the National Reconstruction of Nicaragua, Commander Daniel Ortega, and states that at that meeting Honduras undertook certain obligations which were later violated (point 10 of the Application). However, the wording of the joint declaration issued at the end of the meeting (Ann. 2) clearly shows the circumstances in which it took place and demonstrates that the scope which Nicaragua tries to give it is misleading.

With regard to the circumstances, it is sufficient to recall the events prior to May 1981 which have been set out above in Section II of this chapter. The declaration corroborates the Honduran version of these circumstances when it refers to "potential hijackers of aircraft or ships" and mentions contemporaneous events. However, there was another important circumstance, i.e., the reporting of those events in the media and also of various statements made by leaders of the movement in power in Nicaragua, who repeatedly referred to the possibility of armed conflict with Honduras. The joint declaration, therefore, referred to an "apparent degree of mistrust" between the two countries, and the media were asked to exercise moderation, although there was certainly no exercise of moderation on the part of the leaders of the dominant movement in Nicaragua themselves.

The subject of the meeting held in Guasaule was certainly "the problems that have arisen along the frontier between the two countries". But in a self-serving description in its Application, Nicaragua claims to connect the border incidents with those mentioned in points 3 to 7 and 11 to 13 and to attribute responsibility to Honduras. However, it is obvious that frontier incidents caused by Nicaraguan armed forces are included among the frontier incidents that occurred before May 1981. Moreover, there can be no question of any responsibility on the part of Honduras, as now alleged by Nicaragua in its Application, since the declaration issued after the meeting acknowledges that the border problems were "independent of the wishes of the Governments of Nicaragua and Honduras".

1.16. On the other hand, in its Application to the Court, Nicaragua does not mention the various diplomatic actions taken subsequently by Honduras in fulfilment of the agreements concluded at the meeting in Guasaule. In fact, as was stated in the joint declaration, the Parties agreed to hold two meetings. The first, between the Ministers of Foreign Relations, to exchange views "regarding the International Political situation and relationships between the two sister countries", was held in Tegucigalpa in April 1982, after the elections in Honduras and the installation of a new constitutional government (Ann. 4). The second took place at the border post of La Fraternidad in May 1982, between the Ministers of Defence and Chiefs of Staff, to prepare "plans for combined action in order to eliminate the risks of further incidents in the frontier zone" (Ann. 5: note of accreditation of the Honduran high-level military delegation).

In July 1982, because of the particular importance and increase of incidents in the maritime zones, a special meeting of Heads of the Naval Forces of both countries took place in Corinto, Nicaragua.

Moreover, as the report presented to the National Congress by the Honduran Minister of Foreign Relations on 15 June 1983 shows (Ann. 8), the discussions were continued during 1982-1983 by the Ministers of Foreign Relations of the two States on several occasions at various venues. The Honduran Minister of Foreign Relations paid a visit to Managua in November 1982, when the increase in the number of border incidents and statements made by Nicaraguan leaders had caused a deterioration in the relations between the two countries. On that occasion, as mentioned in the report, the Minister had a full exchange of views with the Co-ordinator of the Junta for the National Reconstruction of Nicaragua, Commander Daniel Ortega, who stated that:

> "there were no true and insuperable problems between Honduras and Nicaragua and that his concern was to achieve an arrangement with the United States of America by means of bilateral discussion".

This declaration, together with others, is relevant for the purposes of the present case.

On 18 February 1983, the Minister of Foreign Relations of Honduras invited the Minister of Foreign Relations of Nicaragua to make a joint inspection of the border zone, in order to verify the accusations against the policy of neutrality of the Honduran Government (Ann. 7). The Government of Nicaragua did not accept this offer.

1.17. The initiation of a multilateral solution to the conflict is contained in the "Plan to internationalize peace in Central America", presented to the Permanent Council of the OAS on 23 March 1982 by the Honduran Minister of Foreign Relations (Ann. 3). This plan was discussed at a meeting with the Nicaraguan Minister of Foreign Relations in Tegucigalpa in April 1982, but, as was stated in the above-mentioned report to the Honduran National Congress:

> "Although the Nicaraguan Minister did not reject the plan completely, he replied by submitting a list of proposals aimed at the establishment of exclusively bilateral negotiations between Honduras and Nicaragua. These proposals completely disregarded the multilateral aspects of the Central American crisis and had the ultimate object of resolving the internal problems of Nicaragua with which it was already faced at that time, leaving in existence the interventionist practices of Managua and military imbalance in the region."[1]

The necessity of a general solution on a regional basis was reiterated by Honduras in a note to the Nicaraguan Foreign Ministry of 23 April 1982 (Ann. 4). The Minister actually said:

> "I understand, as was very clearly explained by Your Excellency, that your proposal is of a bilateral nature and is aimed at improving relations between our two countries, while the Honduran initiative is wider in scope, of a regional nature and with perhaps more ambitious objectives. Despite this, my Government considers that the regional approach should prevail, since a major part of the problems confronted by the Central American countries go beyond the possibility of a bilateral solution."

In October 1982 a meeting took place in San José de Costa Rica between representatives of Belize, Costa Rica, Colombia, El Salvador, the United States of America, Jamaica and Honduras, with the observer from the Dominican Republic, with the aim of establishing a "Peace Forum" (Ann. 6). Nicaragua refused to participate in this meeting, giving as one of its reasons the participation of representatives of the United States of America.

Nevertheless, the need for a multilateral procedure was stressed again at the meeting of the Permanent Council of the OAS in April 1983, when Honduras submitted a draft resolution (Ann. 10). Discussion of this resolution was suspended, with the agreement of Honduras, so that the initiative taken by the Foreign Ministers of the Contadora Group since 9 January 1983 could proceed. The Group subsequently visited the capitals of the States of Central America and held further meetings in April and May 1983. The situation prevailing in Central America and the activities of the Contadora Group are described in various documents annexed hereto (Ann. 9 and Anns. 13 to 27). After the so-called "Cancún Declaration" issued by the Presidents of Colombia, Mexico, Panama and Venezuela on 17 July 1983, supporting the initial negotiations conducted by the Contadora Group (Ann. 13), Nicaragua agreed to participate in this procedure for a general settlement on 19 July 1983 (Ann. 14).

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[1] Ann. 8.

Section V. The Contadora Negotiations as a "Special Procedure" within the Meaning of Article II of the Pact of Bogotá

1.18. The efforts made from 1983 to the present day within the scope of the Contadora Process have been praised by most States, in particular the member States of the European Communities, the Movement of Non-Aligned Countries, and the General Assembly of the United Nations, but perhaps the greatest recognition of the value of these efforts was that expressed by the Court in its Judgment of 27 June 1986[1].

In its Judgment of 26 November 1984 in the *Military and Paramilitary Activities* case, the Court examined the nature of this process in relation to a plea of inadmissibility based on Article 52 (2) of the Charter of the United Nations. There the Court rightly rejected the plea and stated that it

> "does not consider that the Contadora process, whatever its merits, can properly be regarded as a 'regional arrangement' for the purposes of Chapter VIII of the Charter of the United Nations"[2].

Previously, in its Order of 10 May 1984, the Court had stated, in relation to the crisis in Central America:

> "Those matters are the subject of a regional diplomatic effort, known as the 'Contadora Process', which has been endorsed by the Organization of American States, and in which the Government of Nicaragua participates."[3]

1.19. In the text of the joint declaration issued by the Foreign Ministers of Colombia, Mexico, Panama and Venezuela after the meeting held on the island of Contadora, Panama, on 8 and 9 January 1983, they stated their objective of reducing tension and establishing "the basis for a lasting climate of friendly relations and mutual respect" among the States of Central America "through *dialogue and negotiation*" (emphasis added) (Ann. 9). The declaration stating the objectives of the Central American negotiations on 9 September 1983 (Ann. 16) contains the following passage:

> "The Ministers for Foreign Affairs of the Central American countries, with the participation of the countries in the Contadora Group, have begun negotiations with the aim of preparing for the conclusion of the agreements and the establishment of the machinery necessary to formalize and develop the objectives contained in this document, and to bring about the establishment of appropriate verification and monitoring systems. To that end, account will be taken of the initiatives put forward at the meetings convened by the Contadora Group."

In fact, the negotiations related to the general conflict in Central America. As was mentioned in the declaration made by Commander Daniel Ortega on

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[1] *I.C.J. Reports 1986*, p. 145, para. 291.

[2] *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 440, para. 107.

[3] *Military and Paramilitary Activities in and against Nicaragua, Provisional Measures, Order of 10 May 1984, I.C.J. Reports 1984*, p. 183, para. 33.

19 July 1983, when this procedure for the settlement of the general conflict was accepted, these negotiations became multilateral in nature (Ann. 14).

1.20. Although emphasis is placed on the negotiation of agreements which will enable a general settlement of the conflict to be achieved, the Contadora process is in fact more than this. It is, firstly, a forum or body for consultation and *dialogue* among the States of Central America, as is mentioned in the declaration of 9 January 1983. Secondly, as a procedure of *multilateral negotiation*, it has produced various proposals made by Central American States regarding initiatives presented by the Contadora Group or of an autonomous nature, distinct from those initiatives.

Thirdly, the Contadora process is a *mediation* procedure to resolve the general conflict in Central America. In fact, the documents relating to this process draw a distinction between, on the one hand, the group of Foreign Ministers of the Central American States and, on the other hand, the Contadora Group of Foreign Ministers, thus emphasizing the status of the latter as third parties in the process. The work of the Contadora Group consists of constant mediation, since the Foreign Ministers of the Group submit proposals for agreement to the Foreign Ministers of the Central American States for their approval.

Finally, according to the "Declaration of Objectives" issued by Central American countries under the auspices of the Contadora Group, if agreements are concluded ensuring peace and stability in the region, the "machinery necessary" to verify their implementation should be established, including appropriate verification and monitoring systems. This shows that the process conducted by the Contadora Group goes beyond mere mediation and constitutes the embryo of a *system to monitor and verify peace* in Central America, which reflects the close connection between peaceful settlement and the maintenance of peace in the inter-American system.

1.21. The combination of consultation, negotiation and mediation attributed to the Contadora Group makes this process of settlement unusual and perhaps unique. In fact, these functions are not separate or successive, as is the case with the various procedures laid down in the Pact of Bogota for the peaceful settlement of disputes. The Contadora process amounts to the simultaneous use of various methods of settlement within a single procedure.

Moreover, the inter-American nature of this process of international settlement should be borne in mind. Both the Central American States and the States of the Contadora Group and the Support Group[1] are members of the Organization of American States. This direct connection with the Organization's system of peaceful settlement and, in particular, with the Pact of Bogotá, its main instrument, was emphasized, *firstly*, by the endorsement of the Contadora process by various organs of the OAS and, in particular, by its General Assembly (e.g., the various resolutions adopted by the General Assembly from November 1983 to November 1986; Ann. 29) and, *secondly*, by the fact that the Foreign Ministers of the Contadora Group have informed the OAS periodically of the results of its work and the progress achieved. The resolution adopted by the OAS in November 1986 illustrates this point. In paragraph 4 the General Assembly asks the Contadora Group and the Support Group to submit a report regarding their peace-making efforts to the 17th ordinary session to take place in 1987.

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[1] The Support Group is composed of the Ministers of Foreign Relations of Argentina, Brazil, Peru and Uruguay.

1.22. The agenda approved for the multilateral negotiations in May 1983, later reflected in the declaration of objectives approved by the five Central American Governments in September 1983, was as follows:

> "1. Conceptual framework:
>
> - *(a)* Principles and rules of International Law
> - *(b)* Conditions for peaceful co-existence
> - *(c)* Strengthening of democratic political institutions
>
> 2. Political and security problems:
>
> - *(a)* The arms race
> - *(b)* Foreign advisers
> - *(c)* Traffic in weapons
> - *(d)* Political actions and destabilization actions
> - *(e)* Human rights and related matters
> - *(f)* Tension and incidents between frontier and non-frontier States
>
> 3. Economic and social objectives:
>
> - *(a)* Sub-regional co-operation and interchange
> - *(b)* Latin American regional support
> - *(c)* International co-operation for development
> - *(d)* Refugees
>
> 4. Implementation and control of agreements adopted."[1]

1.23. The meetings between the Contadora Group and representatives of the Central American States have been conducted within a framework of multilateral negotiation. Individually or in association, the Central American States have presented proposals and discussed them. They have studied proposals submitted by the representatives of the Contadora Group and participated, by agreement, in the activities and draft texts which have resulted from their discussions.

1.24. Foreign Ministers, deputy Ministers or special delegates, representatives of national bodies, such as the armed forces, national legislatures and "electoral tribunals", and plenipotentiaries appointed for a specific purpose have participated in the process and in the meetings at various levels. The delegations of the Government of Honduras have presented proposals, texts and observations at each stage and at every meeting.

1.25. The Contadora process has covered a wide and comprehensive programme of negotiations which is reflected in the various sections of the draft Treaty of Contadora which resulted from those negotiations. This programme may be summarized as follows:

> "Le programme des négociations porte sur les conflits internes, bilatéraux et régionaux et sur ceux qui présentent un caractère mondial. Il comprend en outre des questions politiques, économiques et sociales.
>
> La partie politique englobe les droits de l'homme, les procédures électorales, ainsi que la réconciliation nationale dans les pays où les communautés se trouvent profondément divisées par suite des luttes armées auxquelles on se livre dans ces Etats. En matière de sécurité, le programme aborde la limitation, la réduction et le contrôle des armements et effectifs militaires, la réglementation des manœuvres militaires nationales ou internationales, le départ des conseillers étrangers,

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[1] See Ann. 8, *in fine*.

> l'interdiction de tout soutien en faveur des forces irrégulières, les mesures antiterroristes, la subversion, le sabotage et le trafic illégal d'armes. Sous l'aspect économique, il traite de la situation des réfugiés et des personnes déplacées, des projets de coopération économique et sociale ainsi que de la coopération internationale aux fins du développement économique et social de nos pays."[1]

Since these negotiations are based on the consent of all of the five Central American countries to the procedure, the Contadora process may be regarded as a "special procedure" within the meaning of Article II of the Pact of Bogotá. As the procedure is still in progress, the participants must continue to fulfil their understanding, must endeavour to complete their negotiations and must refrain from resorting to procedures which paralyse or frustrate the objective of those negotiations. (See paras. 3.12 and 3.13 below.)

1.26. The nature of this agreement to conduct multilateral negotiations has been recognized in various documents issued by this regional forum.

On 7 September 1983, the "Document of Objectives" (Ann. 16) laid down the broad guidelines and, as its title indicates, the agreed objectives of the process. It was approved at a joint meeting of the Central American Foreign Ministers and by letters signed by the Presidents or Heads of State of the five Central American States.

On 8 January 1984 provisions were approved for the implementation of the Declaration of Objectives, and a technical group and three working committees were established to prepare a comprehensive international instrument (Ann. 17).

The declaration issued by the joint meeting of 1 May 1984 (Ann. 18) contains the following final paragraphs:

> "Pour leur part, les ministres des relations extérieures des pays d'Amérique centrale ont réaffirmé leur conviction que le processus de négociation engagé par le groupe de Contadora constituait la meilleure formule et le moyen le plus approprié pour résoudre les conflits que connaît actuellement la région.
>
> Il est par conséquent indispensable que les Etats d'Amérique centrale poursuivent leurs efforts en vue de parvenir à une solution négociée de la crise qui sévit dans la région au moyen de négociations politiques et diplomatiques menées dans un esprit de sérieux et de sincérité, en s'attachant à maintenir leur volonté d'entente et de concertation et en respectant les procédures et moyens de négociation qu'ils

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[1] Jorge Ramon Hernandez Alcèrro, *AFDI*, 1986, p. 273. *Translation:*

"The programme of negotiations relates to bilateral and regional internal conflicts and to global conflicts. It also includes political, economic and social questions.

The political section includes human rights, electoral processes and national reconciliation in countries in which society is profoundly divided by the internal armed conflict in such States. With regard to security, the programme includes the limitation, reduction and control of armaments and troops, the regulation of national or international military manœuvres, the withdrawal of foreign advisers, the prohibition of any support for irregular forces, anti-terrorist measures, subversion, sabotage and illegal arms traffic. The economic section deals with the situation of refugees and displaced persons, economic and social co-operation projects, and international co-operation for the purposes of the economic and social development of our countries."

ont eux-mêmes convenus, afin d'aboutir à la conclusion d'un traité de paix régional."[1]

The second version of a draft Contadora Act for Peace and Co-operation in Central America was issued on 7 September 1984 (Ann. 19). On 20 October the Governments of Costa Rica, El Salvador and Honduras presented a revised version with their comments. On 13 September 1985 the Contadora Group presented the third version of the draft treaty[2] (Ann. 21).

The declaration issued by the Contadora Group regarding a meeting of Central American plenipotentiaries on 21 November 1985 (Ann. 23) contains the following paragraph:

> "4. The plenipotentiary representatives of the countries of the Contadora Group will submit a report on the present status of the negotiations to their Ministers of Foreign Affairs, so that the course of diplomatic action and of the process of making peace in the region may be determined. It will also convey to them the request by the Central American governments that the negotiations be continued within the Contadora frame until a final agreement is reached."

1.27. In January 1986 the Contadora negotiations were oriented to create the conditions necessary to finalize the negotiations regarding the Treaty, including the operational aspects of its system for verification and control. Thus in the Declaration of Caraballeda of 12 January 1986 (Ann. 24), signed by the four member countries of Contadora and the four members of a recently constituted Support Group of Latin American countries, recommendations were submitted to the countries concerned to develop a series of activities

> "to generate a climate of mutual trust that will revive the spirit of negotiation and reflect the political will to achieve effective support for the foundations laid down in order to attain the ultimate objective of the signing and entry into force of the Contadora Act on Peace and Co-operation in Central America".

1.28. The meeting of Central American Presidents held in Esquipulas, Guatemala, on 24 and 25 May 1986 is particularly important in this respect. On that occasion, President Oscar Arias of Costa Rica, President José Napoleon Duarte of El Salvador, President Vinicio Cerezo of Guatemala, President José Azcona H. of Honduras and President Daniel Ortega of Nicaragua signed the Declaration of Esquipulas (Ann. 26), of which the following paragraphs are pertinent:

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[1] *Translation*:

"For their part, the Ministers of Foreign Relations of the countries of Central America reaffirm their conviction that the process of negotiation established by the Contadora Group constitutes the best formula and the most appropriate method for resolving the conflicts in the region.

It is therefore vital that the Central American States should continue their efforts to achieve a negotiated solution to the crisis prevailing in the region by means of political and diplomatic negotiations conducted seriously and sincerely and that they should maintain their willingness to achieve understanding and should observe the procedure and methods of negotiation which they themselves have agreed, with the ultimate object of concluding a regional peace treaty."

[2] Documents also published by the Organization of American States and by the United Nations: A/39/495-S/16742, A/39630 and A/40/737-S/17549.

> "Having met at Esquipulas, Guatemala, on 24 and 25 May 1986, the Central American Presidents state that they have held a useful meeting marked by the frankness with which they dealt with the problems of Central America. In their discussions, they analysed the areas of agreement and the differences which persisted in their ideas about life and the structure of power in a pluralistic democracy.
>
> They agree that the best political forum which is at present available to Central America for the achievement of peace and democracy and the reduction of tensions produced in countries of the region is the Contadora process sponsored by a number of Latin American countries and recognized by the international community. They agree to continue their dialogue on those issues and others not taken up on this occasion.
>
> Accordingly,
>
> THEY DECLARE
>
> 1. That they have decided to hold meetings of Presidents on a regular basis as a necessary and appropriate forum for analysing the most urgent problems facing the area with respect to peace and regional development and for seeking appropriate solutions to those problems.
>
> . . . .
>
> 2. That they are willing to sign the 'Contadora Act for Peace and Co-operation in Central America', and agree to comply fully with all the undertakings and procedures contained in the Act. They recognize that some aspects remain outstanding, such as military manœuvres, arms control and the monitoring of compliance with the agreements. Today, however, in this dialogue among the leaders of fraternal peoples, they find the various proposals put forward by the countries to be sufficiently productive and realistic to facilitate the signing of the Act."

The Central American Presidents also decided to give high level political encouragement to the agreements embodied in the draft and declared that it was necessary

> "to undertake efforts aimed at understanding and co-operation and to back them up with institutional machinery for strengthening dialogue, joint development, democracy and pluralism as basic factors for peace in the area and for Central American integration".

For this purpose, it was decided that it was necessary to

> "establish the Central American Parliament. The members of the Parliament shall be freely elected by direct universal suffrage in keeping with the principle of participatory political pluralism."

1.29. Despite important difficulties, the meetings of plenipotentiaries of Central American countries succeeded in making some progress, and a fourth draft of the Treaty of Contadora was elaborated and published by the Foreign Ministers of the Contadora Group in June 1986 (see Ann. 27).

Section VI. Nicaraguan Responsibilities for Blocking the Contadora Process

1.30. Nicaragua started the multilateral procedure of negotiations by proposing, in October 1983, four different treaties, of which only one was of a general nature, thereafter considered as an appropriate working paper. In a devious approach, one clearly interventionist draft treaty was on Salvadoran problems, and was therefore strongly rejected by the Government of El Salvador and the other participants.

Later on, Nicaragua announced its adherence to the 1984 second draft of the Contadora Act, aware of the fact that the Act was subject to observations, and perhaps satisfied because it did not contain provisions regarding armament reduction or any real mechanisms for verification and supervision of the commitments contained in the Act, which are essential for an effective solution to the general conflict in Central America.

1.31. On 13 September 1985, as mentioned in the declaration issued after the joint meeting of the Central American Foreign Ministers and the Contadora Group held in Panama, it was agreed that the negotiations regarding the third draft Treaty of Contadora were to be concentrated on the following matters that were pending:

> "*(a)* control and reduction of armaments, *(b)* implementation and follow-up mechanisms with regard to security and political matters, and *(c)* military manœuvres".

At that meeting a period of 45 days was fixed for completion of the negotiations. (See Ann. 21, point 4 of the Report of the United Nations Secretary-General.)

This time-limit was not observed because Nicaragua refused to accept verifiable arrangements regarding the limitation and reduction of armaments, troops and installations and concerning the provisions dealing with political matters. Nicaragua's negative position on these matters is amply reflected in the note which President Daniel Ortega Saavedra sent to the members of the Contadora Group on 11 November 1985. This was widely distributed and is reproduced in the United Nations document A/40/894 (Ann. 22).

1.32. The Nicaraguan position caused the negotiations to be virtually suspended for six months, and when 6 June 1986 was adopted as the date for the conclusion of the final agreement, Nicaragua again prevented the negotiations from achieving a successful conclusion, on various grounds, and endeavoured to reopen matters already negotiated and to withdraw from agreements accepted at the above-mentioned joint meeting of September 1985.

In contrast, on 18 May 1986 the plenipotentiaries of Costa Rica, El Salvador, Guatemala and Honduras declared the will of their countries to meet the need for a valid and binding commitment on disarmament, the reduction of troop strength and the regulation and limitation of military manœuvres, as well as to achieve a national balance in the limits for military development in the area. They likewise reiterated their will:

> "3. To fulfil their contractual commitments once the Act comes into force;
> 4. To submit to international control and supervision;
> 5. To gather for the signing of the Act on 6 June 1986."[1]

1.33. In addition to what has been said above, it should be observed that the Government of Nicaragua has dangerously escalated the arms race in Central America by importing large quantities of war materials and communication equipment during the past seven years. The military service legislation has been enforced with greater strictness, thus increasing the number of soldiers, militia and reservists at an even greater pace. The leaders of the Sandinista Popular Army have constantly and recently renewed their threats against Honduras, and on at least two occasions, in March (Ann. 50) and December 1986 (Ann. 51), that Army invaded Honduran territory.

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[1] Ann. 25.

1.34. The Nicaraguan Application to the Court against Honduras, which is analysed below, appears, in this context, as an extremely negative measure designed to impede the process of multilateral negotiation, precisely one month after the presentation of the fourth draft Contadora Act and two months after the Presidents' meeting in Esquipulas. This attitude evoked numerous criticisms and calls for reason at the 16th General Assembly of the OAS held in November 1986.

CHAPTER II

ANALYSIS OF THE NICARAGUAN APPLICATION

2.01. The Application of the Republic of Nicaragua instituting proceedings before the Court refers, according to its own wording, to an alleged controversy or to alleged controversies with the Republic of Honduras, the State against which the claim is brought (Rules of Court, Art. 38). Nevertheless, it immediately becomes apparent that this case is not simply of an exclusively bilateral nature consisting of a controversy between two States. The fact that that is not the position emerges both from the wording of the Application itself and from other facts and circumstances that need to be taken into consideration.

2.02. *Firstly*, what is striking about the Application of the Republic of Nicaragua is that it does not refer only to matters connected with the State against which the claim is brought, the Republic of Honduras. A third State, the United States of America, is also repeatedly referred to in the Application. Those references appear not only in the Statement of Facts (points 12, 17, 18 and 20) but also in the Legal Grounds on Which the Claim Is Based (point 22).

As regards this feature of the Application, it is necessary to point out that on 9 April 1984 the Republic of Nicaragua filed with the Registrar of the Court an Application instituting proceedings against the United States of America. The decision in that case has been delivered by the Judgment of the Court of 27 June 1986. Even so, it must be borne in mind that in that case the Court did not merely examine certain facts appertaining to the activities of the United States in Nicaragua but also examined acts performed by Nicaragua in relation to other States of Central America, particularly Costa Rica, El Salvador and Honduras. Moreover, as a consequence of the facts and allegations of the Parties in that case, a part and indeed a large part, of the Judgment of the Court of 27 June 1986 is concerned with circumstances and considerations connected with Costa Rica, El Salvador and Honduras[1].

Secondly, it is to be noted that only the short space of 30 days fell between the Judgment of the Court in that case and the lodging in the Registry of the Court by Nicaragua of two Applications, one against Costa Rica and the other against Honduras. This fact is certainly unusual in the world of applications by States to the International Court of Justice. There are no precedents for such conduct in the practice of the present Court or its predecessor.

2.03. The two features of the Nicaraguan Application that have just been indicated cannot in any way be considered as fortuitous. As regards the relations existing between the facts of the case concerning *Military and Paramilitary Activities in and against Nicaragua* and the facts of the present cases against Costa Rica and Honduras, it is obvious that all of the said facts form part of the general conflict existing in Central America. However, in the cases brought by Nicaragua against Costa Rica and Honduras in 1986, there is a characteristic which should be emphasized and which was not present in the case filed on 9 April 1984, in which Nicaragua brought an Application against the United States of America. That characteristic is that Nicaragua, Costa Rica and Honduras are all States of Central America, parties to the Pact of Bogotá, and participants in the Contadora process. In contrast, the United States is not within the region of Central America, is not a party to the Pact of Bogotá, and is not a party to the Contadora process.

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[1] See, for example, *I.C.J. Reports 1986*, pp. 70-92 and 119-127, paras. 126-171 and 229-249.

This important difference seems to have been forgotten by Nicaragua in its hasty decision to bring before the Court, on 28 July 1986, the new cases against Costa Rica and Honduras for reasons obviously of a political nature. The brief space of time that elapsed between the Judgment of the Court on 27 June 1986 and the lodging by Nicaragua of the Applications against Costa Rica and Honduras makes it clear that the reason for such Applications to the Court is purely political and also that Nicaragua regards the present cases as essentially a continuation of the previous case against the United States. Nicaragua is attempting, by these successive Applications, to establish a relationship between the case brought against the United States and the present cases. It is doing so in reliance on the Judgment of the Court of 27 June 1986. It is treating that Judgment as a major *political* triumph against the United States, and hopes to secure the support of the Court in order to extend its political triumph to Costa Rica and Honduras.

2.04. In the light of the foregoing considerations, account has to be taken, on the one hand, of the artificiality of the present claim brought by Nicaragua against Honduras. For the separation of the general conflict existing in Central America into different "cases" not only produces effects that are detrimental to the defendant States but also means that the requirements for the due administration of international justice are thereby adversely affected. Account has to be taken of the political motives of Nicaragua in making its Applications to the Court immediately after the Judgment delivered in the preceding case. That political motivation can be seen in the vagueness of the Application against Honduras. Not only is there absolutely no clarity at all in the exposition of the facts, but also that very lack of clarity constitutes evidence, given that there were no previous diplomatic negotiations, that there neither has existed nor does exist any legal dispute that lends itself to being settled by the Court. These two matters will be examined in turn.

Section I. Artificiality of the Application

2.05. The behaviour of Nicaragua relating to the settlement of the general conflict existing in Central America by means of the Contadora process has been indicated above. As regards Nicaragua's behaviour before the Court, from 1984 onwards, two circumstances need to be pointed out. They both emerge from the foregoing and they constitute evidence, in the opinion of the Government of the Republic of Honduras, of the artificiality of the Application of the Republic of Nicaragua.

2.06. *Firstly*, it must be taken into account that by its Application of 9 April 1984 instituting proceedings against the United States of America, Nicaragua has submitted to the Court a set of facts forming part of the general conflict existing in Central America. Again, one month after the Judgment of the Court in that case, Nicaragua has submitted to the Court, by its Applications against Costa Rica and Honduras, a second and third set of facts also appertaining to the same conflict that the region is undergoing.

The overall result of this behaviour on the part of Nicaragua constitutes in the opinion of Honduras, an artificial and arbitrary dividing up of the general conflict existing in Central America. Moreover, this result may have negative consequences for Honduras as a defendant State before the Court, since it affects the guarantee of a sound administration of justice and undermines the principle laid down in Article 59 of the Statute of the Court.

2.07. In fact, the successive Applications lodged by Nicaragua have presented to the Court, for Nicaragua's convenience, some facts forming part of the general conflict in Central America. But it is obvious that some other facts, while appertaining to the same general conflict, are inevitably absent from the proceedings before the Court.

The power granted to the Parties under Article 80 of the Rules of Court does not totally remove this negative consequence; for it is possible for the State against which the claim is brought not to appear before the Court, as occurred in the case concerning *Military and Paramilitary Activities in and against Nicaragua* after the Judgment of 26 November 1984. In this situation, the Court faces a great difficulty in the determination of the facts, as was acknowledged in the Judgment of 27 June 1986[1]. But as regards subsequent disputes before the Court forming part of the same general conflict in the Region, if the facts in the previous case affect other States, the defendant States in later proceedings will find themselves obliged to fill in previous gaps or to put other interpretations on the same facts, none of which would appear to be in conformity with the requirements of a sound administration of justice.

On the other hand, the successive Applications lodged by Nicaragua from 1984 onwards have another prejudicial effect for the defendant States in later proceedings, as is the case of the Republic of Honduras. This negative consequence arises from the assessment of facts in previous proceedings, those facts forming part of the same general conflict existing in Central America; and it may gravely undermine the principle of relativity of international adjudications laid down in Article 59 of the Statute of the Court.

A number of examples concerning the relationship in the assessment of facts between the present case and the case concerning *Military and Paramilitary Activities in and against Nicaragua* are worth pointing out.

This connection occurs in regard to the considerations put forward by the Court in its Judgment of 27 June 1986 relating to the origin, the organization, the financing, the dependence and the activities of the *contra* force[2]. These matters occupy a considerable place in the Applications submitted by Nicaragua against Costa Rica and Honduras. And having regard to these Applications, the question emerges whether the new defendant States must go back to discussing those facts or whether, on the contrary, they must base their assertions on the assessments contained in the Judgment of the Court in the previous case.

Another striking example of the same connection occurs in relation to the allegations put forward by Nicaragua in the previous case against the United States of America concerning the military manœuvres carried out by that State "jointly with Honduras on Honduran territory near the Honduras/Nicaragua frontier"[3]. Notwithstanding the statement of the Court in its Judgment of 27 June 1986 that the said manœuvres, in the circumstances in which they were carried out, did not constitute a breach, as against Nicaragua, of the principle forbidding recourse to the threat or use of force[1]. Nicaragua has gone back to such matters in its Application against Honduras (points 20 and 22), now arguing, against the Judgment of the Court, that the manœuvres were undertaken "with the express object of intimidating Nicaragua". The same question put above also emerges on this particular point.

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[1] *I.C.J. Reports 1986*, pp. 38-45, paras. 57-74.

[2] *Ibid.*, pp. 53-68, paras. 93-121.

[3] *Ibid.*, p. 53, para. 92.

2.08. *Secondly*, in the proceedings before the Court in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Republic of Nicaragua argued that Nicaragua was "actively participating in the Contadora process, and will continue to do so". Furthermore, Nicaragua also said that, given the fact that the United States was not participating in the Contadora process, "our legal claims against the United States cannot be resolved, or even addressed, through that process"[2].

It is undeniable that no such state of affairs exists as regards Costa Rica and Honduras, which are participating together with Nicaragua and other States of Central America in the Contadora process. Nevertheless, on 28 July 1986, despite the fact that the Contadora process was continuing, Nicaragua filed the present Applications against Costa Rica and Honduras in relation to facts forming part of the general conflict in Central America. And it is obvious that the matters submitted to the Court by Nicaragua can be resolved through the Contadora process.

The choice of an alternative route *(altera via)* shows, in the opinion of the Government of Honduras, that the intention of Nicaragua is to bring about an arbitrary and artificial dividing up of the general conflict existing in Central America, even if the Contadora process offers the only possibility of achieving an overall and permanent peaceful settlement, as the Court itself has stated[3]. As will be indicated below, this behaviour on the part of Nicaragua constitutes grounds for the hope that the Court will rule that the Application against Honduras is inadmissible.

2.09. Finally, the Government of Honduras desires to submit an additional consideration, which is connected with the last observation. It is obvious that Nicaragua, in bringing Applications before the Court against Costa Rica and Honduras, has unilaterally side-stepped the Contadora peace process.

In fact, Nicaragua has attempted to present the cases commenced on 28 July 1986 as a continuation of the former case between Nicaragua and the United States of America. But the question emerges, however, as to what would be the effect of decisions of the Court in the present cases, assuming that the Court were to declare itself competent, on the settlement of the conflict taking place in the context of the Contadora process, this settlement being of a general character.

Undoubtedly, the Applications of Nicaragua against Costa Rica and Honduras have had an adverse effect on the continuing of the Contadora process. However, as it will be pointed out later (Part II, Chap. III, Sec. II), it is to be feared that Judgments of the Court in the present proceedings would have an even greater effect on the peace process, as regards the very objectives and results to be achieved by means of this general settlement. All of this confirms, in conclusion, that the present case is of an unusual nature, given the artificiality of the Application submitted by Nicaragua against Honduras, as evidenced by the behaviour of Nicaragua before the Court from 1984 onwards.

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[1] *I.C.J. Reports 1986*, p. 188, para. 227.

[2] *I.C.J. Reports 1984*, pp. 185-186, para. 38.

[3] *I.C.J. Reports 1986*, p. 145, para. 291.

Section II. Vagueness of the Application

2.10. The foregoing considerations show that the present Application is of an unusual nature, given that it raises issues linked to others that have been decided by or are pending before the Court. This connection has prejudicial effects not only on the position of the Republic of Honduras as respondent State but also, as a result of the connection, on the provisions of Article 59 of the Statute of the Court and on the requirements of due administration of international justice. It is therefore to be hoped that the Court will refrain from exercising its judicial function in the present case, as is requested by the Government of Honduras.

Another unusual aspect of the present case emerges upon examining the facts alleged by the Republic of Nicaragua in its Application instituting proceedings against the Republic of Honduras. For the request is not merely artificial. It is also vague and unclear. In particular, there is a marked absence of any reference to previous negotiations between the Parties which directly affects the definition of the subject-matter of the present dispute and its crystallization in time. In the opinion of the Government of Honduras, this state of affairs means that the Application of Nicaragua is inadmissible.

2.11. An examination of the facts put forward by Nicaragua in its Application leads to various important conclusions for the purposes of the foregoing allegation.

Firstly, it is to be observed that a large number of the matters put forward by Nicaragua do not constitute concrete acts or omissions, identifiable by reference to place and to time. In reality, those matters are concerned with indeterminate situations or with opinions about intentions. For example, there is the imprecise reference to Honduras as the State where the *contra* force sought refuge and from whence it launched armed attacks against the territory of Nicaragua (point 2 of the Application). Another example appears at point 3 of the Application, which is again unsubstantiated, relating to the initial armed attacks of the *contra* force, connected with the assertion made in the preceding point.

Moreover it is significant that the references made in points 14, 15, 16, 17 and 18 of the Application to declarations or opinions of certain persons and authorities of various nationalities are made without any indication whatsoever of the means of communication used and without, in most cases, any indication of the date of the said declarations or opinions. This attitude is to be contrasted with the reserved attitude adopted by the Court towards information in the press as evidence of the facts in an international case[1]. Hence the assertions contained in Nicaragua's Application of themselves render themselves unsustainable.

Secondly, it will be found that another large group of matters put forward by Nicaragua in its Application consists of matters containing only a reference to the year in which they allegedly took place, without any geographical location on the territory on which they occurred. That is inadmissible, bearing in mind on the one hand that such matters are used as a basis for allegations of a very grave nature, which range from intervention in the internal affairs of Nicaragua to threats of or the use of force against Nicaragua.

The lack of any geographical location is also inadmissible bearing in mind that, on the other hand, the precise location of the geographical place in which the alleged facts took place is all the more necessary in view of the circumstances existing along the frontier between Honduras and Nicaragua, which have been very clearly indicated by none other than the Foreign Minister of Nicaragua[1]. It makes the task of Honduras in conducting its own investigation into the allegation virtually impossible.

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[1] *I.C.J. Reports 1986*, p. 40, para. 62.

Such is the case as regards the facts put forward by Nicaragua in points 4, 6, 13 and 21 of its Application. The lack of any geographical precision means that the assertions contained therein do not substantiate the matters that they are purportedly supposed to support.

Finally, it will also be found that Nicaragua's Application deliberately confuses facts of a different nature and which can be attributed to different causes. The purpose of this is to justify a general allegation of armed attacks and of military assistance to the *contra* force. For example, in point 19 there are the facts appertaining to incidents on 3 October 1983 and 14 March 1986, solely attributable to the *contra* force, and yet which are alleged to be connected with activities of the armed forces of Honduras. Furthermore, in its search for incidents that might support general allegations against Honduras, Nicaragua goes so far as to introduce into its statements in point 19 of its Application frontier incidents concerning the control of fishing rights, such as the incident that occurred on 18 April 1985.

2.12. Nevertheless, of even greater importance, in the opinion of the Government of Honduras, is the absence of any reference in Nicaragua's Application to any previous negotiations between the Parties on the facts to which the controversy relates. As has been said by a distinguished jurist, a former President of the Court:

> "Undoubtedly, direct negotiations are always resorted to first, and they are indispensable for determining the existence of a dispute, for defining the issues on which the parties are divided and for establishing the methods through which the dispute could be settled."[2]

It is to be noted, with surprise, that in Nicaragua's Application, all that one finds is a mention of certain diplomatic notes on matters prior to 1981 (point 5) and a mention of the meeting of the Presidents of Honduras and Nicaragua in that year (point 9), with a distortion of the wording of the joint declaration of that meeting, as can be seen from the document in Annex 2. If most of the facts put forward are subsequent to 1981, and given that such facts justify, according to Nicaragua, the allegations that it puts forward against the Republic of Honduras, it really is difficult to understand how it comes about that Nicaragua's present energy in submitting the case to the Court has not been accompanied by the same energy in the past. Why did Nicaragua not treat these matters as the subject of a dispute with the Government of Honduras? Why did it not seek a negotiated solution with Honduras?

The truth is that the vagueness and the unclear nature of the matters put forward clearly show the political purpose behind the submission of the present Application to the Court. Moreover, when it comes to serving that purpose, facts and allegations lose all the relevance and precision that, strictly speaking, they should possess in proceedings before the Court.

It is true that Article 38, paragraph 2, of the Rules of Court only requires an Application to contain a succinct statement of the facts and legal grounds. Nevertheless, as is generally admitted, a lack of clarity in the facts contained in the Application, together with the absence of any reference to the previous negotiations between the Parties concerning those facts, are circumstances rendering it impossible to establish before the Court what the subject-matter of the controversy allegedly submitted to its decision is, and what the specific points of fact or of law at issue between the Parties in the dispute are. All of this should necessarily lead to a ruling that the present Application is inadmissible.

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[1] *I.C.J. Reports 1986*, p. 81, para. 147.

[2] Eduardo Jiménez de Aréchaga, "International Law in the Past Third of a Century", Academy of International Law, *Collected Courses*, Vol. 159, 1978-I, p. 147.

Section III. Concluding Remarks

2.13. The foregoing considerations have emphasized the consequences that arise from the artificiality and vagueness of Nicaragua's Application. Nicaragua has, by arbitrarily dividing up the general conflict existing in Central America, by means of successive Applications to the Court, created a procedural situation between different disputes which could adversely affect the requirements of the due administration of justice.

PART II. THE QUESTION OF THE COMPETENCE OF THE COURT

INTRODUCTION

The Republic of Honduras denies the competence of the Court in the present case on grounds of both admissibility and jurisdiction. The distinction between these two separate categories of objections to the competence of the Court was recognized in the Judgment of the Court of 26 November 1984 in the case concerning *Military and Paramilitary Activities in and against Nicaragua*. There the Court correctly characterized certain of the grounds of objection by the United States of America as objections to admissibility rather than to jurisdiction[1]. The distinction between the two has been examined in earlier cases before the Court[2] and broadly amounts to a distinction between objections to competence which do not arise from an interpretation of the compromissory clause and those which do so arise. Thus objections which involve denial of *locus standi*, or allegations of failure to exhaust local remedies, or of the lack of "propriety" in a reference to the Court, involve questions of admissibility. In contrast, objections which seek to show that the particular dispute does not fall within the terms of the compromissory clause — be it a treaty or a unilateral declaration under Article 36.2 of the Statute — involve questions of jurisdiction. In the chapters that follow it is proposed to examine, firstly, the objections of Honduras to the admissibility of the dispute and, secondly, its objections to jurisdiction.

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[1] *I.C.J. Reports 1984*, p. 429, para. 84.

[2] See, for example, the separate opinion of Judge Sir Gerald Fitzmaurice in the case concerning the *Northern Cameroons (Cameroon v. United Kingdom), Preliminary Objections, Judgment of 2 December 1963*, *I.C.J. Reports 1963*, pp. 102-103.

CHAPTER III

OBJECTIONS TO THE ADMISSIBILITY OF THE DISPUTE

3.01. Both Honduras and Nicaragua are parties to the Pact of Bogotá[1]. The core obligation of that Pact is set out in Article II:

> "The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.
>
> Consequently, in the event that a controversy arises between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution."

3.02. Although the first paragraph of this Article refers to the obligation to use regional procedures of pacific settlement before referring them to the Security Council (an understandable provision given that Article I referred to the obligation to refrain from the threat or use of force, or other means of coercion[2]) the central obligation to use the procedures of the Pact contained in Article II is *not* confined to such disputes as may otherwise be referred to the Security Council under Chapter VI of the United Nations Charter (i.e., disputes "the continuance of which is likely to endanger the maintenance of international peace and security . . .", Article 33 (1)). On the contrary, the category of disputes embraced by the Pact of Bogotá is quite general. Nor can it be suggested that the procedures contained in the Pact operate only as alternatives to reference to the Security Council, and do not apply when no such reference is contemplated or actually made.

3.03. Thus, the obligations of Article II, and of the Pact generally, apply with equal force when what is contemplated is a reference to the International Court of Justice. Indeed, since reference to the International Court is itself one of the procedures provided in the Pact, it is clear that the Pact, and all the obligations contained in the Pact, apply in respect to a reference of a case to the International Court between States parties to the Pact. Reference to the Court is expressly covered by Chapter IV, Articles XXXI-XXXVII, of the Pact. It is, therefore, a "procedure established in the present Treaty", in the terms of Article II, and the use of this procedure must be "in the manner and under the conditions provided for . . .". This leads to the first ground of objection to the admissibility of the dispute.

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[1] Anns. 34, 35 and 36. Honduras ratified the Pact on 7 February 1950, and Nicaragua on 26 July 1950.

[2] "Article I. The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures."

Section I. The Requirement that, in the Opinion of the Parties, the Dispute Cannot Be Settled by Direct Negotiations

3.04. Article II states, in express terms, that the disputes or controversie which the parties bind themselves to submit to the procedures established i the Pact — including, as we have seen, reference to the International Court — are those which, in the opinion of the parties, cannot be settled by direc negotiations through the usual diplomatic channels.

Thus there is a requirement, as a condition precedent to reference to th Court or, indeed, to any of the Pact's procedures, that both parties shoul have manifested the opinion that the dispute was not susceptible to settlement by direct negotiations. It is important to emphasize that, in the structur of Article II, this is an essential pre-condition, the fulfilment of which is matter for the parties.

3.05. It may be noted that Article II of the Pact of Bogota is worded differently from the compromissory clauses with which the Court dealt in th *Diplomatic and Consular Staff* case[1] or in its 1984 Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua*[2]. In both those cases the compromissory clauses in the treaties in question made n reference to the opinions of the parties on the question whether the disput could, or could not, be satisfactorily resolved by diplomatic means. For example, Article XXIV (2) of the United States/Nicaragua Treaty of Friendship Commerce and Navigation reads as follows:

> "Any dispute between the Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy shall be submitted to the International Court of Justice, unless the Parties agree to settlement by some other pacific means."

With such a clause, the phrase "not satisfactorily adjusted by diplomacy" i simply a description of the type of dispute covered by the clause. As such, it i for the Court, objectively, to determine whether the dispute is of that character, and the Court did so in both the cases referred to[3]. The distinction is wel made in the separate opinion of Judge Ago when he said:

> "I would emphasize, in this connection, that Article XXIV (2) of th FCN Treaty does not make use of the wording to be found in othe instruments which formally requires diplomatic negotiations to hav been entered into and pursued as a prior condition for the possibility o instituting proceedings . . ."[4]

But where, as here, the parties agree that the question whether the dispute i of a character to be submitted to the procedures of the Pact is a question *fo*

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[1] *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 198* pp. 26-28, paras. 50-54.

[2] *I.C.J. Reports 1984*, pp. 428-429, paras. 82-83.

[3] Further, in the *Diplomatic and Consular Staff* case, the Court noted Iran's refusal t enter into negotiations (Judgment, para. 51); and in the *Military and Paramilitary Activities* case (Judgment of 26 November 1984, para. 83) the Court not only made the determination, as an objective one on the facts, but also noted that the fact that Nicaragua, in it allegations against the United States, had not expressly invoked the Treaty did not mea that there was no dispute arising from the Treaty.

[4] *I.C.J. Reports 1984*, p. 515, para. 4.

their opinion, and not for objective evaluation by the Court, then we have a genuine pre-condition to justiciability and not a mere description.

3.06. What is so striking in the present Application by Nicaragua is that no proof of any kind is offered that the matters at issue, as described in the Application, could not be settled by direct negotiations through the usual diplomatic channels. It is not even a case in which this was the opinion of one party, but not of the other[1]. Nicaragua offers no evidence of the opinion of either Party that complaints against Honduras — essentially, toleration of the establishment of Nicaraguan insurgents in Honduras, hostile to the Nicaraguan Government; invasion of Nicaragua by Honduran armed forces; and the giving of logistical support to the *contras* — were not capable of settlement by negotiations. Indeed, as demonstrated in Chapter I of the Memorial[2], there were bilateral negotiations and when, in 1982-1983, the negotiations became multilateral it was not because these specific complaints against Honduras could not be settled by negotiation. The shift to multilateral negotiations, as we have seen, occurred for quite different reasons.

To conclude on this point, therefore, it is the view of Honduras that the Application of Nicaragua is inadmissible by reason of Nicaragua's failure to demonstrate that the Application conforms to this pre-condition in Article II.

Section II. The Obligation on Parties, Having Opted for a "Special Procedure" for the Settlement of Any Controversy, Not to Commence Any Other Procedure until that "Special Procedure" Has Been Concluded

3.07. Article II makes clear that the Parties bind themselves to use the procedures established in the Pact "or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution". Moreover Article IV provides:

> "Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfilment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded."

The term "special procedure" is not a term of art and its meaning is simply a procedure specially devised for the purposes of the particular controversy. As has been shown in Chapter I, Section V, above, paragraphs 1.18 to 1.29, the Contadora process is clearly a "special procedure" in this sense, being designed specifically for the solution of the complex crisis — involving a series of controversies — in Central America.

3.08. It cannot be suggested that the complaints now made by Nicaragua against Honduras in its Application to the Court fall outside the Contadora process, or the solutions currently envisaged as part of the process. It will be recalled that Nicaragua makes essentially three complaints: support by Honduras for Nicaraguan forces hostile to the Sandinista government of Nicaragua on Honduran territory (Application, paras. 2-6, 7, 14); invasion of Nicaraguan territory by Honduran forces (paras. 7, 19); Honduran logistical support to the *contras* (para. 19). Yet, clearly, the scope of the Contadora proposals is designed specifically to cover such complaints. If regard is had to the fourth draft of the Contadora Act on Peace and Co-operation in Central America of 7 June 1986[1] then it will be seen that they contain the following:

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[1] In such a case the argument might be made that, there being a dispute over the classification of the dispute, the preliminary question of classification must itself be submitted to the Court as a dispute.

[2] See Chapter I, Section IV, above.

(i) Chapter I, General Commitments, paragraph 2:

> "*(a)* They shall refrain from any action . . . aimed against the territorial integrity, political independence or unity of any State, and, in particular from any action involving the threat or use of force.
>
> . . . .
>
> *(d)* They shall respect the existing intentional boundaries between States.
>
> . . . .
>
> *(g)* They shall take such action as is necessary to secure their frontiers against irregular groups or forces operating from their territory with the aim of destabilizing the Governments of other States.
>
> *(h)* They shall not permit their territory to be used for acts which violate the sovereign rights of other States, and shall see to it that the conditions obtaining in their territory do not pose a threat to international peace and security."

(ii) Chapter III, Commitments with regard to Security Matters, Section 3, 6, 7:

> "*(a)* Commitments to close down all foreign military bases, schools o installations in their respective territories. (Para. 25.)
>
> *(b)* Commitments not to authorize in their respective territories th establishment of foreign bases, schools or other installations of military nature. (Para. 26.)
>
> *(c)* Commitments to refrain from giving any political, military, finan cial or other support to individuals, groups, irregular forces o armed bands advocating the overthrow or destabilization of othe Governments, and to prevent, by all means at their disposal, the us of their territory for attacks on another State or for the organiz tion of attacks, acts of sabotage, kidnappings or criminal activiti in the territory of another State. (Para. 33.)
>
> *(d)* Commitments to exercise strict control over their respective bo ders, with a view to preventing their own territory from being use to carry out any military action against a neighbouring State; (Par 34.)
>
> To deny the use of and dismantle installations, equipment ar facilities providing logistical support or serving operational fun tions in their territory, if the latter is used for acts against neig bouring governments; (Para. 35.)
>
> To disarm and remove from the border area any group or irregul force identified as being responsible for acts against a neighbouri State. Once the irregular forces have been disbanded, to procee with the financial and logistical support of international organiz

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[1] See "Contadora Act on Peace and Co-operation in Central America", Annex II UN doc. A/40/1136, S/18184, 2 July 1986.

tions and Governments interested in bringing peace to Central America, to relocate them or return them to their respective countries, in accordance with the conditions laid down by the Governments concerned. (Para. 36.)

(e) Commitments to refrain from giving political, military, financial or any other support for acts of subversion, terrorism or sabotage intended to destabilize or overthrow Governments of the region; (Para. 38.)

To refrain from organizing, instigating or participating in acts of terrorism, subversion or sabotage in another State, or acquiescing in organized activities within their territory directed towards the commission of such criminal acts." (Para. 39.)

Patently, therefore, the solutions towards which the Contadora process has been working cover not only the kind of allegations which Nicaragua makes against Honduras, but also the very substantial allegations Honduras makes against Nicaragua. It is difficult to see how, if the Court were disposed to act by way of enjoining the Parties to undertake, or to refrain from certain patterns of conduct, these could be more comprehensive than the very substantial commitments which will be embodied in the Contadora Act. Moreover, the Contadora Act will embody its own mechanisms of enforcement, initially via three main Committees for the execution and follow-up of the commitments entered in the Act. That is:

— an *Ad Hoc* Committee on Political Matters
— a Verification and Control Commission for Security Matters
— an *Ad Hoc* Committee on Economic and Social Matters.

They will in turn be supported by the political and other mechanisms of the OAS and, doubtless, of the Security Council also. It is difficult to imagine any enforcement mechanism of comparable efficacy to enforce compliance with any judgment which the Court might issue.

3.09. Thus, it can be asserted with confidence that the Contadora process is not only a "special procedure" within the meaning of Article II of the Pact of Bogota, but it is one accepted and supported by both Parties and specifically designed to cover exactly the type of allegations now made by Nicaragua. This special procedure has already reached the stage of a draft Act, embodying detailed rules of conduct and machinery for the verification and enforcement of the commitments to be undertaken by the Parties.

3.10. It remains, finally, to be observed that Article IV of the Pact precludes resort to any other procedure — including reference to the Court — until such time as the special procedure adopted by the Parties has been *concluded*. It cannot seriously be contended that the Contadora process has been "concluded". The letter dated 26 September 1985 from the Foreign Ministers of the Contadora Group, addressed to the Secretary-General of the United Nations[1] specifically envisages further meetings until the final signing of the Act is achieved. In the Final Act of the Luxembourg Conference of 11 and 12 November 1985 (Ann. 31) between the EEC, the Contadora Group, and the Central American States, including both Honduras and Nicaragua, express reference was made to "the Contadora Group, *which is continuing its efforts*

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[1] UN doc. A/40/737, S/17549, p. 4. See, also, Security Council resolution 562 (85) of 10 May 1985, in which the Council "reaffirms once again its firm support for the Contadora group and urges it to intensify its efforts".

to bring about a peaceful solution in Central America . . .". The Foreign Minister of Mexico, addressing the Third Plenary Session of the OAS on 3 December 1985, stated that "the Contadora Group will persevere in mediation which rigorously excludes any form of partiality or preference"[1]. And in November 1986 the Assembly of the OAS requested the Contadora Group and the Support Group to report to its XVIIth ordinary session on the progress of the work. As recently as January 1987 the Foreign Ministers of the Contadora Group and of the Support Group, following their visit to all Central American capitals in the company of the Secretaries-General of the OAS and the United Nations, issued a communiqué in Mexico in which they stated:

> "All the Heads of the Central American States have expressly stated to the Mission that the forum of Contadora continues to be the most adequate instrument to reach a negotiated solution to the regional conflict, and we judge it to be fundamental that we continue our efforts for peace in the area . . ."[2]

3.11. The fact that some States, like Honduras itself, have asked to complete negotiations on some pending issues concerning the draft Act proposed by the Contadora Group, before committing themselves to signing the Act, is not evidence of the failure or termination of the Contadora process. On the contrary, it is evidence that the process continues and that the States directly involved wish to ensure that the Act is fully effective in meeting the demands of the situation. The Foreign Minister of Honduras, addressing the General Assembly of the OAS on 13 November 1986 explained that Honduras was ready to subscribe to the Act, but wished to see it strengthened by techniques to verify its observance, especially in matters affecting the security and the democratization of the countries concerned (Ann. 32).

That appeared to be the position of Nicaragua itself. In May 1984, Nicaragua and Costa Rica signed a joint declaration in which both Parties "reaffirm their trust in the efforts of the Contadora Group and the necessity of favouring direct dialogue between both States"[3]. And in its Memorial dated 30 June 1984 presented to this Court in its case against the United States of America, Nicaragua gave a detailed chronology[4] of Nicaragua's participation in the Contadora process. It approved the document of objectives in September 1983, and made its own proposals to the Contadora Group in October 1983, and again in December 1983. In January 1984 Nicaragua signed the Contadora statement on Measures to Be Taken to Fulfil the Commitments Undertaken in the Document of Objectives. And in May 1984 Nicaragua signed the joint declaration with Costa Rica referred to above at a meeting in Panama with the Deputy Foreign Ministers of the Contadora Group. And as recently as May 1986, the President of Nicaragua signed the Declaration of Esquipulas in which he expressly agreed

> "that the best political forum which is at present available to Central America for the achievement of peace and democracy and the reduc-

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[1] OEA/Ser. P. AG/ACTA 4 (XIV-E/85), 3 December 1985, p. 7, unofficial translation into English from the Spanish original text: "El Grupo de Contadora persevera en una mediacion que excluye rigurosamente cualquier parcialidad o preferencia."

[2] Ann. 33.

[3] Memorial of Nicaragua in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, 30 June 1984, Exhibit H.

[4] *Ibid.*, Exhibit K.

tion of tensions produced in countries of the region is the Contadora process ..."[1].

3.12. There is, therefore, no doubt that Nicaragua freely and repeatedly accepted the Contadora process, in such a manner that it entered into a commitment to that process on which the other Central American States were entitled to rely. Even apart from the specific legal obligation under Article IV of the Pact of Bogotá not to initiate any other procedure of settlement until the procedure already chosen — the special procedure of Contadora — had been completed, it is clear that Nicaragua would be legally bound to maintain its commitment to the Contadora process. Elementary considerations of good faith dictate that, once Nicaragua had accepted a commitment to Contadora, as it clearly had, and the other States involved had relied on that commitment and adjusted their own positions (as well as expending enormous amounts of time and energy) in the good faith reliance on Nicaragua's commitment, it was no longer open to Nicaragua to simply renege on that commitment and begin quite different and incompatible procedures before this Court. In the *Nuclear Tests* case the Court said:

> "One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age where this co-operation in many fields is becoming increasingly essential."[2]

Those words are particularly apposite to the co-operation required of all parties to the Contadora process. In that case the Court held France to be bound by a purely unilateral declaration. *A fortiori*, the principle must apply to a solemn declaration, jointly made by Heads of State. The declaration stated expressly that "they agree" on the use of the Contadora process. It was an agreement on which all parties relied, and which was interpreted as a binding commitment. The binding nature of that commitment can best be illustrated by contemplating what would have happened if Nicaragua had refused its agreement to that proposition about the use of Contadora. The position of all the other parties would have been radically transformed. Thus, by virtue of the Esquipulas Declaration, Nicaragua entered into a commitment with which its present unilateral Application to the Court is plainly incompatible. It is this breach of a commitment by Nicaragua — a commitment based both on Article IV and on elementary principles of good faith — which has temporarily checked the further progress of the Contadora effort towards a solution.

3.13. An application to the Court against the United States did not, of course, clearly involve Contadora as here, since the United States was not a party to that process[3]. But Honduras is a party, so that an Application against Honduras directly raises this breach of commitment by Nicaragua. To argue that there can be no incompatibility between the Contadora process and a reference to the Court is facile. Such an argument overlooks the specific obligation of Article IV of the Pact of Bogotá. It also overlooks two important elements of the Contadora approach. The first is that the Contadora approach was not confined to a simple resolution of legal claims: it embraces agreements on legislative programmes, on military manœuvres, on levels of armaments, on foreign military bases, on arms traffic, economic and social matters, refugees, and the establishment of new organs of supervision. The second is that even to the extent that the proposed Act will deal with the very issues which are the subject of the present claims by Nicaragua (or the inevitable counter-claims by Honduras), it cannot necessarily be assumed that there will be complete identity between what the Act might contain, and what a further judgment of the Court might contain. For, almost inevitably, to be acceptable to all parties the Act resulting from the Contadora process will have to involve elements of compromise. Such elements are foreign to the Court's judicial task, and thus no necessary identity of treaty (the proposed Act) and judgment can be assumed. If that is so, there are only two possible conclusions. Either there will be an inconsistency between the treaty and the judgment, so that one or the other will be rejected; or else the conclusion of the Act will have to wait on the judgment and then be so drafted as to accord fully with the judgment. The latter course, in effect, precludes compromise, so the chances of securing agreement to such a treaty must be minimal.

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[1] Ann. 26.

[2] *Nuclear Tests (Australia v. France), Judgment of 20 December 1974, I.C.J. Reports 1974*, p. 268, para. 46.

[3] Nor, indeed, is the United States a party to the Pact of Bogotá.

This brief excursus into the likely results of any attempts to use the Court and the Contadora process simultaneously suffices to show the wisdom of Article IV of the Pact of Bogotá. The prohibition of the simultaneous pursuit of different procedures of settlement of the same dispute was adopted for very good reasons. This concludes the examination of the second ground of the inadmissibility of the Nicaraguan Application.

3.14. The above two grounds of inadmissibility derive from the obligations of the Pact of Bogotá. There are further grounds of inadmissibility which derive from the requirements of justice and the due administration of justice. These are the political motivation of the Nicaraguan Application, the artificiality of the Application (in particular, the division into separate cases of what is essentially one, general conflict, to the prejudice of the States cited as defendants), and the vagueness of the Application. These further grounds of inadmissibility have been amply set out in Chapter II of this Memorial and require no further elaboration here. They supplement the two grounds of inadmissibility dealt with in this chapter, and reinforce the submission of Honduras that this Application should be declared inadmissible.

CHAPTER IV

OBJECTIONS TO THE JURISDICTION OF THE COURT

Section I. The Statute of the Court

4.01. The Court can only be validly seised with jurisdiction in conformity with its own Statute. Article 36 of the Statute envisages four separate modes by which, on the basis of consent by both parties, the Court can be seised with jurisdiction. These are:

(i) Under Article 36, paragraph 1, where the consent is specific to an actual dispute (as in the case of a special agreement or *compromis*) or is contained in a specific treaty or convention in force. In the latter case no other legal instrument or declaration is necessary; the consensual basis of jurisdiction is to be found in the treaty or convention as such and no further act or declaration vis-à-vis the Court is required.

It is on this basis that such jurisdiction must be distinguished from jurisdiction arising under Article 36, paragraph 2, of the Statute — the so-called "Optional Clause". As Rosenne says:

> "That such a treaty is in force creates as between its parties the necessary elements of mutuality and reciprocity . . . However, that compulsory jurisdiction will be based on Article 36 (1) of the Statute and not on Article 36 (2) . . ."[1]

(ii) Under Article 36, paragraph 2, where the consent is contained in the unilateral declaration of each party, and where the jurisdiction of the Court "is conferred on the Court only to the extent to which the two Declarations coincide in conferring it"[2]. Although jurisdiction under Article 36, paragraph 2, is normally based on unilateral declarations, it is possible to conceive a link between this provision of the Statute and a treaty. There might be a treaty obligation to make a unilateral declaration under Article 36, paragraph 2; or, alternatively, a treaty provision might be designed as a form of collective declaration for the purposes of Article 36, paragraph 2. In the former case it would be the State's declaration which is the source of jurisdiction. Where a declaration is made pursuant to a prior treaty commitment, it is the declaration which defines the extent of the acceptance of the jurisdiction, and the prior treaty is irrelevant to that question. There may well remain a question between the parties to such prior treaty as to whether, in making its unilateral declaration, the State has fully performed its obligations under the treaty. But that is a question *inter partes*, quite separate from the question which the Court may decide of the actual jurisdiction conferred on the Court by the terms of this unilateral declaration.

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[1] Rosenne, *The Law and Practice of the International Court* (1965), Vol. I, p. 334.

[2] *Anglo-Iranian Oil Co.* case *(Jurisdiction), Judgment of 22 July 1952, I.C.J. Reports 1952*, p. 103.

4.02. In the event that pursuant to the treaty, States consider it useful to make individual declarations, perhaps including reservations, and the power to do so is not excluded by the treaty, the Court is bound to give effect to those declarations[1]. However, a treaty engagement may restrict the power of a State to make such reservations. Yet, for the Court, the question whether, in attaching reservations to a unilateral declaration under Article 36, paragraph 2, a State has violated a prior treaty engagement is a separate question from that of the actual jurisdiction conferred on the Court by such a unilateral declaration. This latter question is conclusively governed by the terms of the unilateral declaration itself, together with any attendant reservations.

4.03. Although the distinction between jurisdiction based on a treaty or convention in force under Article 36, paragraph 1, and jurisdiction based upon a unilateral declaration under Article 36, paragraph 2, is thus clear, it is obvious that where States make unilateral declarations under Article 36, paragraph 2, pursuant to a treaty commitment, there does arise a risk of confusion over whether, under the terms of the Statute, jurisdiction is to be based on paragraph 1, or paragraph 2 of Article 36; i.e., is the jurisdiction a *conventional* jurisdiction or an *optional clause* jurisdiction? That question can only be answered by looking at the evidence of how the parties themselves have characterized their actions vis-à-vis the Court. Since jurisdiction rests on consent, whatever its statutory basis, it must be for the will of the parties to determine the particular statutory basis of any expression of consent. Thus, when a party has clearly evidenced its intention to accept the jurisdiction of the Court under the optional clause, it is not conceivable that the Court will disregard that clear evidence of intent and find, contrary to the State's intention, that there is a conventional jurisdiction under Article 36, paragraph 1.

(iii) Under Article 36, paragraph 5, there is the provision, to which all States parties to the Statute consent, that declarations made under Article 36 of the Statute of the Permanent Court shall be deemed to be acceptance of the compulsory jurisdiction of the International Court for the period which they shall have to run and in accordance with their terms.

(iv) Under Article 37 there is a parallel provision providing for the "inheritance" by the International Court of any conventional jurisdiction established by a treaty or convention providing for reference of disputes to the Permanent Court.

Of these four separate modes by which the Court may be seised with jurisdiction, the mode relevant to any dispute between Honduras and Nicaragua, whether pursuant to Article XXXI of the Pact of Bogota or to the declarations of the two States vis-à-vis the Court, is the second of those described above, the so-called "Optional Clause".

A. Article 36, Paragraph 2, of the Statute of the Court and the Declarations Made Thereunder by Honduras and Nicaragua

1. The Position of Honduras

4.04. Some months prior to the Ninth Inter-American Conference, Honduras had already decided to accept the compulsory jurisdiction of the Court under Article 36, paragraph 2. Acting pursuant to an authorization of the Honduras National Congress of 19 December 1947, Honduras filed a formal declaration accepting the Court's jurisdiction under Article 36, paragraph 2, on 2 February 1948 in the following terms:

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[1] Of course, the "attachment" of reservations can be simultaneous with the filing of the unilateral declaration or as part of its terms, or it may be by way of subsequent notification.

> "*Hereby declares:*
>
> That it recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:
>
> *(a)* the interpretation of a treaty;
> *(b)* any question of international law;
> *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation;
> *(d)* the nature or extent of the reparation to be made for the breach of an international obligation.
>
> This declaration is made on condition of reciprocity and for a period of six years from the date of the deposit of the declaration with the Secretary-General of the United Nations."

4.05. During the Ninth Inter-American Conference in 1948, Honduras tabled a resolution on 21 April 1948 recommending to the American States that all States which had not hitherto made declarations under Article 36 (2) of the Statute of the International Court should do so with the minimum delay[1]. Consistently with this approach, Article XXXI of the Pact of Bogotá, signed nine days later on 30 April 1948, began with the preambular phrase "In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare . . .".

4.06. Whereas Honduras had previously acted to define the extent of its obligation assumed under Article XXXI with regard to the Court's jurisdiction under Article 36, paragraph 2, and was thus in the same position as States like Brazil (bound as from 12 March 1948), Colombia (from 30 October 1937), Dominican Republic (from 4 November 1933), El Salvador (from 29 August 1930), Guatemala (from 27 January 1947), Mexico (from 23 October 1947), Nicaragua (from 24 September 1929), Panama (from 14 July 1929), Paraguay (from 11 May 1933) and Uruguay (from 27 September 1921), for other States the necessary acts of definition of their obligations lay in the future. Thus Bolivia deposited a declaration on 16 July 1948, and Costa Rica only on 5 February 1973.

4.07. Honduras renewed its declaration for a further six years on 19 April 1954 in the following terms:

> "The Executive Power of the Republic of Honduras, having been duly authorized by the National Congress under Decree No. 77 of 13 February 1954, to renew the Declaration referred to in Article 36 (2) of the Statute of the International Court of Justice,
>
> *Hereby declares:*
>
> That it renews the Declaration which it made on 2 February 1948, recognizing as compulsory *ipso facto* and without special agreement, in

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[1] Documents of the Third Commission, Ninth Conference, p. 79; Doc. CB-330/C. III-Sub A-6.

> relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
>
> *(a)* the interpretation of a treaty;
> *(b)* any question of international law;
> *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation;
> *(d)* the nature and extent of the reparation to be made for the breach of an international obligation.
>
> This declaration of renewal is made on condition of reciprocity, for a period of six years, renewable by tacit reconduction, from the date on which it is deposited with the Secretary-General of the United Nations."

And, on 20 February 1960, on the expiry of that declaration, Honduras again renewed its declaration in similar terms:

> "The Government of the Republic of Honduras, duly authorized by the National Congress, under Decree No. 99 of 29 January 1960, to renew the Declaration referred to in Article 36 (2) of the Statute of the International Court of Justice, hereby declares:
>
> 1. That it renews the Declaration made by it for a period of six years on 19 April 1954 and deposited with the Secretary-General of the United Nations on 24 May 1954, the term of which will expire on 24 May 1960; recognizing as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:
>
> *(a)* the interpretation of a treaty;
> *(b)* any question of international law;
> *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation;
> *(d)* the nature and extent of the reparation to be made for the breach of an international obligation.
>
> 2. This new Declaration is made on condition of reciprocity, for an indefinite term, starting from the date on which it is deposited with the Secretary-General of the United Nations."

This last declaration continued in force until modified by the current declaration, dated 22 May 1986, in these terms:

> "The Government of the Republic of Honduras, duly authorized by the National Congress under Decree No. 75-86 of 21 May 1986 to modify the Declaration made on 20 February 1960 concerning Article 36 (2) of the Statute of the International Court of Justice,
>
> *Hereby declares:*
>
> That it modifies the Declaration made by it on 20 February 1960 as follows:
>
> 1. It recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:
>
> *(a)* the interpretation of a treaty;
> *(b)* any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
(d) the nature and extent of the reparation to be made for the breach of an international obligation.

2. This Declaration shall not apply, however, to the following disputes to which the Republic of Honduras may be a party:

(a) disputes in respect of which the parties have agreed or may agree to resort to other means for the pacific settlement of disputes;
(b) disputes concerning matters subject to the domestic jurisdiction of the Republic of Honduras under international law;
(c) disputes relating to facts or situations originating in armed conflicts or acts of a similar nature which may affect the territory of the Republic of Honduras, and in which it may find itself involved directly or indirectly;
(d) disputes referring to:
  (i) territorial questions with regard to sovereignty over islands, shoals and keys; internal waters, bays, the territorial sea and the legal status and limits thereof;
  (ii) all rights of sovereignty or jurisdiction concerning the legal status and limits of the contiguous zone, the exclusive economic zone and the continental shelf;
  (iii) the airspace over the territories, waters and zones referred to in this subparagraph.

3. The Government of Honduras also reserves the right at any time to supplement, modify or withdraw this Declaration or the reservations contained therein by giving notice to the Secretary-General of the United Nations.

4. This Declaration replaces the Declaration made by the Government of Honduras on 20 February 1960."[1]

2. The Position of Nicaragua

4.08. Nicaragua, having signed the 1920 Protocol of Signature of the Statute of the Permanent Court, made a declaration under Article 36, paragraph 2, of the Statute of the Court in the following terms:

> "On behalf of the Republic of Nicaragua I recognize as compulsory unconditionally the jurisdiction of the Permanent Court of International Justice."[2]

The Court has subsequently held, in its Judgment of 26 November 1984, that this was a valid acceptance of the jurisdiction of the Permanent Court (and thus of the International Court by virtue of Article 36, paragraph 5, of the Statute) notwithstanding the fact that Nicaragua had never formally ratified its signature of the 1920 Protocol, or at least had never communicated such ratification to the League of Nations.

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[1] See Annex 43. Article XXXI, by making express reference to Article 36, paragraph 2, of the Statute must also permit the same facility to make reservations as all States possess under the Optional Clause; certainly Article XXXI does not exclude the power to make reservations.

[2] This text, a translation from the French, is given at *I.C.J. Reports 1984*, p. 399, para. 15; the declaration is dated 24 September 1929.

There is no evidence that Nicaragua has made any other declaration to the Court under Article 36, paragraph 2, and, in the 1984 proceedings before the Court, Nicaragua has been content to rely on its 1929 declaration as a valid, binding declaration under Article 36, paragraph 2, in relation to the present Court.

4.09. For the sake of completeness, reference should also be made to the positions adopted by both Honduras and Nicaragua, on this precise question of the effect of the 1929 Nicaraguan declaration, in the dispute between these two States in 1957 over the applicability of the arbitral award made by the King of Spain in 1906. In its pleadings before the International Court of Justice, Honduras founded its claim on a dual jurisdictional basis[1]. The first basis was the special agreement of July 1957 (clearly an agreement within the meaning of Article 36, paragraph 1, of the Statute) (Ann. 38); and the second was the two declarations under Article 36, paragraph 2, of the Statute, namely the then current Honduran declaration of 1954 and the Nicaraguan declaration of 1929.

Although Nicaragua, in its own pleadings, failed to address this second ground of jurisdiction alleged by Honduras (except to describe it as "inadvertence"), and although the Court in its Judgment did not comment on this second alleged basis of jurisdiction, it can be said that Honduras certainly saw the two declarations as valid under Article 36, paragraph 2, and Nicaragua must be deemed to have taken that view of its own declaration if its position before the Court in 1957 and 1984 is to be consistent.

3. *The Effect of the Reservations Made by Nicaragua and Honduras to the Jurisdiction of the Court*

(a) *Nicaragua's "reservation"*

4.10. Although Nicaragua's 1929 declaration was unconditional, when Nicaragua signed the Pact of Bogotá it made the following declaration:

> "The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogotá) wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.
>
> Hence the Nicaraguan Delegation reiterates the statement made on the 28th of the current month on approving the text of the above mentioned Treaty in Committee III."

The significance of this reservation is important in the context of the present case. As explained above, in the 1957 dispute between the two States Honduras and Nicaragua. Nicaragua took the view that the jurisdiction of the Court rested exclusively on the special agreement of July 1957. Necessarily, therefore, it has to be assumed that Nicaragua saw no basis for the jurisdiction of the Court in Article XXXI of the Pact of Bogotá. For, if Article XXXI already provided a valid basis of jurisdiction, there was no need whatever for a special agreement. The question is, therefore, why did Nicaragua (and also Honduras, for that matter) not regard Article XXXI of the pact as a valid basis of jurisdiction in 1957?

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[1] The history of this jurisdictional issue is set out in detail by Judge Ago in his separate opinion in *I.C.J. Reports 1984*, pp. 528-531, paras. 32-39. For the Honduran claim, see the Memorial of Honduras, paras. 36-40, in case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906, I.C.J. Pleadings 1960*, Vol. I, pp. 59-61.

4.11. The only possible answer is that Nicaragua assumed that its "reservation" to the Pact precluded any jurisdiction of the Court. However, if the jurisdiction of the Court under Article XXXI was a conventional jurisdiction under Article 36, paragraph 1, of the Statute, and quite separate from any jurisdiction under the optional clause, based on the two declarations of Honduras (1954)[1] and Nicaragua (1929), there was no reason whatever why a treaty reservation, operating under Article 36, paragraph 1, of the Statute, should have any effect on a consensual jurisdiction established by two valid declarations under Article 36, paragraph 2? *But the Nicaraguan position obviously assumed that the Nicaraguan reservation to the Pact of Bogotá operated equally as a reservation under the Optional Clause, Article 36, paragraph 2, of the Statute*[2].

If that is so, then the converse must equally be true: that is to say, any reservation under Article 36, paragraph 2, applies equally to a jurisdiction asserted under Article XXXI of the Pact of Bogotá. This is, in fact, the view which Honduras holds, and which it now urges on the Court, namely that Article XXXI is linked to Article 36, paragraph 2, of the Statute. It envisaged *one* basis of jurisdiction, the precise extent of which would be established by the declarations made by States under Article 36, paragraph 2, or any reservations they might have attached to Article XXXI of the Pact of Bogotá.

(b) *Reservations of Honduras*

4.12. It was for this same reason that Honduras communicated the text of its new declaration of 22 May 1986 not only to the Secretary-General of the United Nations, for the purposes of Article 36, paragraph 2, of the Statute, but also expressly notified the OAS that the changes introduced in the new declaration were equally applicable with respect to Article XXXI of the Pact of Bogota[3]. Honduras has consistently taken the view that declarations pursuant to Article 36, paragraph 2, were linked to the obligation assumed under Article XXXI of the Pact: these declarations defined the limits within which the State accepted the jurisdiction. Indeed, it seemed inconsistent to have one set of conditions governing the Honduran acceptance of the jurisdiction of the Court vis-à-vis the world at large (i.e., other States generally accepting the Optional Clause) and a different set of conditions governing the relations between Honduras and other parties to the Pact of Bogotá.

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[1] This, it must be recalled, was *without* reservations except as to reciprocity.

[2] The Honduran position was not inconsistent with this. The Honduran Memorial simply argued that the Court had jurisdiction on the dual basis of the 1957 Special Agreement and on the basis of the two declarations (Honduras, 1954, Nicaragua, 1929) under Article 36, paragraph 2, of the Statute. Obviously, it was not for Honduras to raise the Nicaraguan reservation and the question whether this operated both under the Pact of Bogota and Article 36, paragraph 2, of the Statute: Memorial of Honduras, *loc. cit.*, paras. 37-40.

[3] This was pursuant to Decree No. 79-86 of the National Congress of Honduras, dated 22 May 1986 (Ann. 39). The communication to the OAS was by letter DSM-206/86, dated 26 May 1986 (Ann. 40A).

4.13. Moreover, if one examines the actual terms of the declaration of 22 May 1986, especially those of paragraphs *(c)* and *(d)*, it is patently clear that those reservations were intended to apply in the relations between Honduras and its neighbours. That is to say, the exclusion of disputes arising out of armed conflicts, or disputes affecting Honduran territory, territorial airspace or maritime territory, was an exclusion of disputes likely to arise with the neighbours of Honduras, the other States parties to the Pact of Bogotá. It was clearly not a declaration drafted solely for the purpose of the relations of Honduras with States outside the American continent. Nevertheless, *ex abundante cautela*, Honduras took the precaution of so notifying all OAS members through the Secretary General of the OAS[1], and no objection was received to this rather obvious interpretation.

On the basis, therefore, that the declaration of 22 May 1986 operates for the purposes both of Article 36 (2) of the Statute and of Article XXXI of the Pact of Bogotá, it became necessary to examine the effect of those reservations.

(i) *The reservation of "disputes relating to facts or situations originating in armed conflicts or acts of a similar nature which may affect the territory of the Republic of Honduras, and in which it may find itself involved directly or indirectly" (paragraph 2* (c) *of the declaration)*

4.14. The Statement of Facts contained in the Nicaraguan Application of 28 July 1986, paragraphs 2-9, 11, 13-20; and the description of the Nature of the Claim, paragraph 30, clearly demonstrate that the dispute alleged by Nicaragua falls within the terms of this reservation. Indeed, the essence of the Nicaraguan complaint is that Honduras has allowed its territory to become the base for hostile, armed expeditions by the *contras* and also by the armed forces of Honduras itself against Nicaragua. The dispute is therefore necessarily one covered by this reservation.

(ii) *The reservation of "disputes in respect of which the parties have agreed or may agree to resort to other means for the pacific settlement of disputes" (paragraph 2* (a) *of the declaration)*

4.15. As explained above[2], it is the view of Honduras that both Parties are under an existing obligation not to proceed by way of an Application to the Court because of Articles II and IV of the Pact of Bogotá and, in addition, because both Parties have committed themselves to the Contadora process in circumstances which would make it a breach of faith for either Party to renege on that commitment and proceed instead by unilateral application to the Court.

It needs to be emphasized that the reservation contained in paragraph 2 *(c)* of the Honduran declaration arises from the same commitment. In other words, Honduras spelt out the category of disputes excluded by reservation 2 *(c)* in the terms it did, precisely because it was with this category of disputes that the Contadora process was essentially involved. Honduras did not take the view that such disputes were inherently non-justiciable, but rather the view that its commitment to the Pact of Bogotá and to the Contadora process as a "special procedure" under the Pact precluded reference to the Court at this stage, before the completion of the Contadora process. Absent their commitments to the Pact, it would have been possible for the Parties to take their dispute before the Court by special agreement.

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[1] Anns. 40B and 41.

[2] *Supra*, paras. 3.04 to 3.13.

B. ARTICLE 36, PARAGRAPH 1, OF THE STATUTE OF THE COURT AND ITS RELATION TO THE PACT OF BOGOTÁ

4.16. There is an express reference to Article 36, paragraph 1, of the Statute of the Court in Article XXXII of the Pact of Bogotá. This provides as follows:

> "ARTICLE XXXII. When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute."

It was because of this provision that the Pact was quite properly listed in the *I.C.J. Yearbook 1947-1948* amongst the "other Acts" envisaging the jurisdiction of the Court. The correct view would seem to be that it is, therefore, Article XXXII (and not Article XXXI) which is the basis of the *conventional*, or treaty-based, jurisdiction of the Court[1]. And the reservations of Honduras to the jurisdiction of the Court under Article 36, paragraph 2, of the Statute would be inapplicable to a case in which jurisdiction was based on Article 36, paragraph 1, combined with Article XXXII of the Pact.

4.17. The reasons why Nicaragua has not sought to invoke Article XXXII are apparent from the terms of the Article itself. Any invocation, by way of unilateral application, of the compulsory jurisdiction of the Court presupposes that two conditions precedent should be met:

(i) conciliation, either under Chapter Three of the Pact or as established by agreement of the parties, should have been attempted and demonstrably failed; and
(ii) the parties should have failed to agree on arbitration.

In the present case neither pre-condition is satisfied, and Nicaragua quite properly does not seek to invoke this compulsory jurisdiction. What Nicaragua does seek to do is to pervert the intention behind Article XXXI of the Pact, so as to convert that provision into a conventional basis of jurisdiction — something it was never intended to be — and thereby to avoid any necessity to satisfy these two pre-conditions of Article XXXII.

Section II. The System of the Pact of Bogotá

4.18. In the opinion of the Republic of Honduras, Article XXXI of the American Treaty on Pacific Settlement, known as the Pact of Bogotá, on which the Application of Nicaragua is allegedly based in the present case, does not provide any basis for the jurisdiction of the International Court of Justice. For that Article cannot be interpreted or applied in an isolated fashion, and this conclusion emerges just as clearly from an analysis of the provisions of the Pact of Bogotá as it does from the analysis of the Court's Statute in the previous Section.

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[1] It has to be added that, in some of the doctrinal commentaries on the Pact of Bogotá, a different view has been taken, linking Articles XXXI and XXXII of the Pact; this view is explored in the section that follows.

The correctness of this conclusion can be ascertained by examining successively (i) the conditions for the articulation of the peace process laid down by that regional treaty together with the system laid down, at worldwide level, in the Charter of the United Nations and in the Statute of the International Court of Justice; (ii) the general spirit and the structure of the Pact; and then (iii) the provisions thereof which are relevant in the present case. For it emerges from such an examination that the effect of the reservations accompanying the declaration by Honduras acknowledging the jurisdiction of the Court in its new version of 22 May 1986 is exactly the same as regards Article XXXI of the Pact of Bogotá as it is concerning Article 36, paragraph 2, of the Statute of the International Court of Justice. Moreover, Article XXXI repeats Article 36, paragraph 2, almost word for word, thereby emphasizing their correspondence as *one* basis of jurisdiction.

A. ARTICULATION OF THE REGIONAL SYSTEM AND OF THE GENERAL SYSTEM FOR THE SETTLEMENT OF DISPUTES

4.19. The question of the relationship between regional agreements for the settlement of disputes and the system laid down by the United Nations Charter has been considered by the International Court of Justice in its Judgment of 26 November 1984 as to its competence in the *Military and Paramilitary Activities* case in terms which will be considered later. However, it should be noted from the outset that the legal context in which that question arose in that case is very different from the context in which it arises in the present case.

In the Application against the United States, although Nicaragua was able to refer to a bilateral treaty of friendship, trade and navigation between itself and the United States, it was unable to invoke the Pact of Bogotá, to which the United States is not a party. In the present case, on the contrary, both States have ratified that multilateral regional instrument for the settlement of differences. This instrument exists within an overall, normative and institutional framework established by the countries of Latin America during the years which followed the Second World War. The reason for establishing that framework was to develop and strengthen understanding and co-operation amongst the countries of the continent, and the framework was created soon after the establishment of the institutions and procedures created by the United Nations Charter and by the Statute of the Court which is annexed to the Charter[1].

4.20. Therefore, the relationship between those two systems — the regional system and the worldwide system for the settlement of differences — are characterized by *complementarity* and *subordination*.

It should be noted that the characteristic of *complementarity* results firstly from Article 52 of the United Nations Charter, which provides that none of the provisions of the Charter

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[1] The regional inter-American system was destined to be based on three treaties: the Charter of the Organization of American States, the Inter-American Treaty on Reciprocal Assistance (or Treaty of Rio) of 2 December 1947, and finally the American Treaty on Pacific Settlement, known as the Pact of Bogotá.

> "precludes the existence of regional agreements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations".

Paragraph 2 of that Article continues:

> "The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies *before* referring them to the Security Council." (Emphasis added.)

4.21. These provisions are faithfully echoed in the Latin American regional system. Thus Article 23 of the Charter of the Organization of American States provides:

> "All international disputes that may arise between American States shall be submitted to the peaceful procedures set forth in this Charter, *before* being referred to the Security Council of the United Nations." (Emphasis added.)

For its part, the Inter-American Treaty on Reciprocal Assistance, signed at Rio de Janeiro on 2 September 1947 provided

> "The High Contracting Parties undertake to submit any controversy that may arise between them to the methods of peaceful solution, and undertake to attempt to resolve the same between themselves by means of the procedure in force in the Interamerican system, *before* submitting any such controversy to the General Assembly or to the Security Council of the United Nations." (Emphasis added.)

Finally, Article II of the Pact of Bogotá declares:

> "The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures *before* referring them to the Security Council of the United Nations." (Emphasis added.)

4.22. Thus, a comparison of the relevant provisions of the United Nations Charter with the relevant provisions of the three Latin American Conventions reveals the clearly affirmed intention to encourage the member States of the regional system to seek *firstly* a peaceful solution to their differences, within the framework of the procedures most specifically laid down for such purpose and established by the regional agreements.

It is moreover the case that that intention is wholly in line with the thinking behind the wording of the more general provision concerning the settlement of differences, namely Article 33 of the United Nations Charter:

> "1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, *first of all*, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, *resort to regional agencies or arrangements*, or other peaceful means of their own choice." (Emphasis added.)

4.23. One could even be led to take the view, adhering to a literal interpretation of the various Articles quoted above, that those Articles establish a priority of recourse to regional procedures over the methods of settlement laid down in the United Nations Charter itself. However, that would be going too far, as is shown by what happens in practice and by the majority doctrinal opinion. The complementarity and the co-ordination of the regional and worldwide systems for the settlement of disputes, while they clearly encourage the prior use of the regional procedures, do not prohibit recourse to the specific means of settlement laid down by the United Nations Charter. That is notably the essence of the conclusions reached by two of the most well-respected authors on the subject, J. M. Ruda[1] and E. Jiménez de Aréchaga[2].

4.24. The latter author, in particular, points out that, apart from the possibility of having recourse to the United Nations provided for in Article 35 thereof, Article 103 of the Charter provides:

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Thus the co-ordination of the systems is accompanied by an ultimate *subordination* of one of the systems (the regional system) to the other (the worldwide system).

However, this subordination, which is the ultimate guarantee of the harmony between the two, only operates in the event that some incompatibility emerges between the regional system and the worldwide system.

This is what Mr. Jiménez de Aréchaga says in his above-mentioned study, where he states:

> "Pour définir les obligations des Membres des Nations Unies qui sont parties à des accords régionaux, en ce qui concerne les obligations susceptibles de limiter l'accès direct aux organes des Nations Unies, il faut se fonder exclusivement sur les dispositions de la Charte de San Francisco. Ou bien les dispositions des accords régionaux correspondent à celles de la Charte des Nations Unies, ou bien elles sont en conflit avec la Charte, et en ce cas elles sont dépourvues de valeur."[3]

That observation would appear to be wholly in line with the one made by the Court itself in its Judgment of 26 November 1984, where it said:

> "Furthermore, it is also important always to bear in mind that all regional, bilateral and even multilateral, arrangements that the Parties

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[1] J. M. Ruda, "Relaciones de la OEA y la ONU en cuanto al mantenimiento de la paz y la securidad internacionales", Separata de *Revista Juridica de Buenos Aires*, 1961-I-II, p. 27.

[2] E. Jiménez de Aréchaga, "La coordination des systèmes de l'ONU et de l'Organisation des Etats américains pour le règlement pacifique des différends et la sécurité collective", *Recueil des cours de l'Académie de droit international de La Haye*, t. 111 (1964).

[3] Jiménez de Aréchaga, *op. cit.*, p. 435. *Translation:*

> "In order to define the obligations of the members of the United Nations which are parties to regional agreements, as regards any obligations that might limit direct access to the organs of the United Nations, reliance must be placed exclusively on the provisions of the Charter of San Francisco. Either the provisions of the regional agreements correspond to those of the United Nations Charter, or they are in conflict with the Charter, in which case they are of no value."

> to this case may have made, touching on the issue of settlement of disputes or the jurisdiction of the International Court of Justice, must be made always subject to the provisions of Article 103 of the Charter . . ."[1]

4.25. It clearly results from the reaffirmation of this rule of subordination that a State placed in the legal situation of Honduras, which is at the same time a party to the regional system and a party to the worldwide system for the settlement of disputes, cannot be faced against its will with a basis for the jurisdiction of the Court that differs depending on whether the Court bases its jurisdiction on the regional treaty or on the Statute annexed to the United Nations Charter. It is obvious that, should such a difference exist, the regional basis could not be made to prevail over the basis provided by the worldwide system.

In other words, if it were the case that Article XXXI of the Pact of Bogotá granted jurisdiction to the Court in circumstances incompatible with those laid down by Article 36 of the Statute of the Court, the Statute would ultimately prevail over the Pact, and not vice versa.

4.26. Once this statement of principle has been made, it will be found that in reality there are no differences in this instance between the provisions of the regional Pact and the provisions of the general system concerning the establishment of the jurisdiction of the Court. What is more, an examination of the general spirit of the Pact, and then of Article XXXI itself, will show that the intention of its authors was to ensure that the extent of the jurisdiction that it grants to the Court would be identical to the extent of jurisdiction granted by Article 36, paragraph 2, of the Statute of the Court. It was indeed precisely for that purpose that the Pact of Bogotá followed the wording of the Statute so faithfully.

B. THE GENERAL SPIRIT AND THE ULTIMATE PURPOSE OF THE PACT OF BOGOTÁ

4.27. The idea of the peaceful settlement of disputes owes a great deal to the efforts of the countries of Latin America. Even if they have not always been able to put it into practice, they emerge as forerunners on this subject in the history of modern international law. The quest for peace through law seems to have animated them since their independence, and perhaps the faint echo or feeling of nostalgia for Bolivar's great dream of the unification of the sub-continent. In 1826, the Treaty of Union, League and Perpetual Confederation, signed at Panama under the inspiration of Simón Bolívar himself, already contained provisions for the solution of disputes by means of conciliation (Arts. 13 and 16)[2]. From 1889 to 1890, when pan-American endeavours were renewed by the institution of the first international American conference, there have been more and more treaties containing provisions on the settlement of disputes, or devoted entirely thereto. They have multiplied to the point where they form a dense and somewhat complex network of interwoven obligations and procedures.

4.28. Without going into an exhaustive analysis, mention should be made of the Arbitration Treaty adopted by the Second Inter-American Conference

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[1] *I.C.J. Reports 1984*, p. 440, para. 107.

[2] See F. Galo Leoro, "La reforma del tratado americano de soluciones pacíficas o Pacto de Bogotá", *Anuario jurídico interamericano*, 1981, particularly pp. 31-34.

(1902) and the Gondra Treaty of 3 May 1923 for Avoiding and Preventing Conflicts between American States, which establishes procedures of enquiry and two conciliation commissions, whose conclusions, without being binding, result in a period of suspension of all hostile acts between the parties to the dispute[1].

Then came the General Convention on Inter-American Conciliation, at the same time as the General Treaty on Inter-American Arbitration, both of which were adopted at the Washington Conference on 5 January 1929. The latter Treaty already limited the subject-matter of arbitration to the settlement of disputes of a legal nature. In order to do so, it used the enumerative text of Article 36 of the Statute of the Permanent Court of International Justice[2].

In 1933 came the "Antibellicose Treaty of Non-Aggression and of Conciliation", known as the Saavedra Lamas Treaty, after the name of the Argentinian statesman who sponsored it. During that same year the Additional Protocol to the above-mentioned General Convention on Conciliation of 1929 was also adopted.

Moreover, three years later, alongside two new treaties, one of them on good offices and mediation, the other on the prevention of controversies, there emerged the first effort by means of treaty to "coordinate, amplify and ensure the accomplishment of the treaties existing among the Latin American States". These three treaties are dated 23 December 1936.

The set of regional treaties in existence did not prevent the majority of the Latin American States from being party to the Statute of the Permanent Court of International Justice.

4.29. The need to simplify and to harmonize the networks of obligations and of the various procedures laid down in these different instruments made itself felt even before the Second World War. After 1945 that need was felt all the more keenly, and the efforts at regional level were simulated by the movement which, at worldwide level, had led to the establishing of a new legal order founded on the institutionalization of co-operation within the United Nations.

At the "Inter-American Conference on the Problems of War and Peace" held at Mexico in March 1945, Resolution XXXIV stressed that the Inter-American Legal Committee on Peace should

> "coordinate the continental instruments for the prevention and peaceful solution of controversies in a manner such that the gradual and progressive application thereof shall necessarily result in the achievement of the desired ends"[3].

4.30. Thus in the terms of reference given to the Committee, *two of the key ideas* had appeared which were to inspire the drafting, in successive draft texts, of what was to become some three years later the Pact of Bogota:

— First, the attempt to establish a rationalized *system* for the settlement of disputes in the light of the lessons learnt from attempts made in previous treaties, which were heterogeneous, over-numerous and which had, for the most part, remained dead letters.

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[1] See J. J. Caicedo Castilla, "La Organizacion de los Estados Americanos", Escuela de funcionarios internacionales, *Cursos y conferencias 1955-56*, II, Madrid 1957, p. 199.

[2] *Idem.*

[3] See F. Galo Leoro, *op. cit.*, p. 33.

Second, and this perhaps even more remarkable, the assignment to such a system of the ultimate purpose of rendering compulsory, and as it were irreversible, the recourse to solutions that could only be peaceful. Such a system would offer, at the free choice of the States, a wide range of procedures for resolving disputes.

4.31. Freedom as regards the means, but an obligation as regards the results to be obtained, which was the settlement of controversies by peaceful means: such was the approach adopted in the work of the Inter-American Juridical Committee until the Conference of Bogotá. Was this legal edifice to be crowned by the creation of an Inter-American Court of Justice? The example to be found in the old Central American Court of Justice and the desire to achieve organic integration of the legal order at regional level were pointers in that direction. The temptation to create such a court was momentarily felt amongst the members of the Committee and even within certain governmental delegations at the Conference of Bogotá[1].

However, the feeling fairly easily prevailed that the inter-American regional movement should not have any adverse effect on the system of the United Nations but should, in conformity with the spirit of Article 52 of the Charter, mentioned above, be in harmony therewith and contribute to the strengthening of the role and authority of the new International Court of Justice, which had become a court of worldwide jurisdiction, even more than its predecessor, the Permanent Court of International Justice.

4.32. Such were the reasons for which the authors of the Pact of Bogotá drew up a treaty characterized by the fact that it constituted:

(i) a systematized set of procedures for settling disputes, running from good offices to judicial procedure;

(ii) a set of provisions leaving freedom of choice to the parties to the disputes;

(iii) a set of provisions the ultimate efficacy of which was to be guaranteed by what has sometimes been called, no doubt improperly, an "automatization" of the compulsory peaceful solution of disputes. This was to be achieved by a two-fold means of legal protection, surprising in many ways, as will be seen, and consisting of both the acknowledgment of the jurisdiction of the International Court of Justice (Arts. XXXI and XXXII) and the institution of compulsory arbitration in the event that the International Court of Justice were to declare itself incompetent (Art. XXXV).

The relevant provisions should now be examined in greater detail.

C. EXAMINATION OF THE RELEVANT PROVISIONS OF THE PACT OF BOGOTA

4.33. Articles II and IV of the Pact, already encountered previously in the examination of the conditions for the admissibility of Nicaragua's Application, should first be examined, before the methodical study of the role of Article XXXI in relation to the other provisions of Chapter IV, which is devoted to judicial procedure.

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[1] See the Report of Mr. Lleras, Secretary General of the Organization of American States, presented to the Council of the Organization of American States on 3 November 1948, *Annals of the Organization of American States*, Vol. I, No. 2, 1949, pp. 93 *et seq.* (Ann. 37).

1. Articles II and IV of the Pact of Bogotá

4.34. It has already been seen above that the first paragraph of Article II of the Pact is to be placed in parallel with the corresponding provisions of the Inter-American Treaty on Reciprocal Assistance and of the Charter creating the Organization of American States, to the extent that it imposes on the High Contracting Parties the obligation to resolve their international disputes with the aid of the regional peaceful procedures before having recourse to the Security Council. It has been established that that obligation does not mean that the regional procedures have absolute priority over the procedures laid down in the United Nations Charter, particularly under Article 103 of the Charter (see para. 4.25 above). Nevertheless, as has also been stated above (see para. 4.15 above), it remains the case that within the framework of the Pact itself, in application of the combined effect of Articles II and IV thereof, where the parties have selected a procedure for the settlement of their dispute, whether the said procedure is one of those established in the Pact itself or whether it is a "special procedure" (Art. II), they must follow it to its full extent. This means that the parties must do everything possible, in good faith, to carry out the procedure to its conclusion, with a view to achieving a peaceful solution.

As has been noted above, the Contadora Group procedure obviously now constitutes, between the States party to the Pact, a "special procedure" within the meaning of Article II. Therefore, that procedure must be followed fully prior to any recourse to another procedure offered by the same treaty, even a judicial procedure. As has been seen, this already constitutes sufficient reason for excluding the application of Article XXXI in the present case.

Nevertheless, the application of Article XXXI should be examined methodically from the point of view of the question of the competence of the Court, since Nicaragua claims that the jurisdiction of the International Court of Justice is based on Article XXXI, together with Article 36 of the Statute of the Court.

2. Situation of Article XXXI within Chapter IV of the Pact of Bogotá

4.35. Articles XXXI to XXXV of the Pact of Bogota have given rise to abundant commentaries by Latin American and other learned writers in international law, despite the fact that, in practice, those provisions have never really been followed. There are a number of reasons for this interest. The main reason no doubt is to be found in the fact that those provisions constitute what one might call the spearhead of the system established by the Pact. That system consists at one and the same time of the product of the long period of gestation of legislation whose history has been outlined above, and of the accomplishment, in the minds of its promoters, of a qualitative leap as compared with the attempts made in the earlier treaties.

It is in effect Articles XXXI to XXXV that hold the system in place and guarantee, in principle, that a peaceful solution is to be inevitable. Upon closer examination, however, it will be found that the system is not, it seems, held together so absolutely securely as its promoters had wished.

An analysis of these provisions should be approached without any preconceptions, and the spirit of the general context in which they are situated should be borne in mind. The treaties prior to the Pact have already been referred to, as has the evolution of the thinking that took place during the work carried out by the Inter-American Legal Committee. Articles XXXI to

XXXV must now be considered in the general context of the treaty, prior to considering them one by one from the point of view of their intrinsic meaning and of the inter-relations between them.

4.36. As has already been noted, in Chapter IV of the Pact, devoted to judicial procedure (which is one of the procedures which may be chosen by the parties to a dispute with a view to pacific settlement), the jurisdiction of the International Court of Justice is based on two alternative grounds.

(a) The first ground consists of the system of the "optional clause", which is offered to States by Article 36 (2) of the Statute of the Court. Article XXXI of the Pact of Bogotá makes express reference thereto, thus defining at the same time, in language taken word for word from Article 36 (2) of the Statute, the extent of the Court's jurisdiction. Moreover, this "optional clause", in Article XXXI, contains a jurisdiction which can be more precisely defined, by means of a unilateral declaration, by all the States which are parties to the Pact. Honduras was among the first three of such States to do so. Article XXXI of the Pact authorizes each State, in accordance with any declaration made by that State before the occurrence of a dispute, to seise the Court unilaterally. However, in that case the seisin of the Court is of course subject to the terms in which the jurisdiction of the Court has been acknowledged by the parties to the dispute. Thus, in the present case, the reservations accompanying the Honduran declaration of acknowledgment of the Court's jurisdiction prevent the Court from being validly seised by Nicaragua's unilateral Application (see paras. 4.44 *et seq.*, below).

(b) The second basis for the Court's jurisdiction is distinct from the first basis, as can be seen from a literal reading of the provision which contains it, which is Article XXXII of the Pact. This Article does not base the jurisdiction of the Court on the system of the "optional clause" of Article 36, paragraph 2, of the Statute, but rather on the system of seisin of the Court by means of a treaty or convention, as provided for by Article 36, paragraph 1, of the Statute of the Court. Under Article XXXII of the Pact, seisin of the Court by one of the two parties to the dispute is, however, subject to the dual condition that, first, a prior conciliation attempt has failed and, second, that there has been a failure to choose an arbitral procedure. However, as has been seen in the present case, neither of these conditions has been fulfilled.

4.37. The above interpretation is at once the most simple, the most logical, and the most consistent with the literal wording of the Pact. It takes full account of the difference between the references made, respectively, by Article XXXI of the Pact to Article 36, paragraph 2, of the Statute of the Court, and by Article XXXII of the Pact to Article 36, paragraph 1, of the Statute. It is supported by State practice, notably by that of Honduras, and has been adopted by several authors including, in particular, Ann van Wynen Thomas and A. J. Thomas, Jr., in a work published in 1963 entitled *The Organization of American States*. In speaking of Article XXXI of the Pact of Bogotá, they note as follows:

> "This Article and the following Articles attempt to place the American States under some legal compulsion to submit their international legal disputes to the Court for binding decision, and in this the Treaty marks some advance. However, it must be remembered that in the first instance resort to adjudication by the Court is just another procedure of peaceful settlement. The parties are bound to submit their international disputes to some pacific procedure, but they are given complete discretion as to what procedure they shall agree upon. They may agree to

> Arbitration. Good Offices and Mediation. Investigation and Conciliation, or some other pacific procedure of their choice rather than Judicial Procedure. They may agree on the latter. but there is nothing to bind them to do so.
>
> *However. if the disputants submit to the procedure of Conciliation and if this procedure does not lead to a solution and if the parties hav not agreed an Arbitral Procedure.* then either party is entitled to hav recourse to the International Court of Justice. In the event that thi particular pattern becomes reality. the Court's jurisdiction is compulsory in accordance with Article 36. Paragraph 1. of the Statute of th Court. and one party to the dispute unilaterally may require the other t submit to Judicial Procedure."[1] (Emphasis added.)

4.38. However. it must be noted that a greater number of authors. who i fact represent the majority doctrine on the subject. analyse Article XXX of the Pact in a manner which in some respects is different. by linking indissociably to Article XXXII.

This analysis differs in certain respects from the first in seeing the tw Articles not as autonomous. but as complementary provisions: as in the cas of the first approach. these authors note that Article XXXI of the Pact. referring to Article 36. paragraph 2. of the Statute of the Court. determine the extent of the Court's jurisdiction *ratione materiae*. However. according t this second approach. Article XXXI is *itself* considered as a declaration acknowledgment. made collectively. of the obligatory jurisdiction of th Court. Nevertheless. it is indissociable from Article XXXII. which dete mines the procedural conditions for seisin of the Court. Under this interpr t. tion of the Pact. Article XXXI. having no autonomy. offers no access to th Court other than that provided for in the following Articles: and. as has bee noted above. in Article XXXII such access is subject to the two prior cond tions that conciliation should have failed and that an attempt to establish a arbitral procedure should have been unsuccessful. Given the authoritati status and the number of the authors who defend this theory. it is not witho interest to cite certain of their most illustrative writings. and then to conce trate on determining the most important implications thereof: the merits this analysis will thus become apparent and it will be noted that. after depa ing from certain different premises. it essentially results in consequenc which are very close. if not exactly identical. to those resulting from the mo simple interpretation outlined earlier.

4.39. It was. firstly. the Secretary General of the Organization of Ame can States who. upon presenting the work accomplished by the Conferenc commented on the most important part of the Pact in the following terms:

> "Thus. the Treaty envisages a logical system of pacific means. whi the States may select. *but should the application thereof not be sufficie and should the stage consisting of conciliation not succeed. and aga should it be the case that the parties have not agreed to submit the mat to arbitration.* either party has the right to lodge an Application befo the International Court of Justice. which necessarily has jurisdicti under Article 36.2 of its Statute."[2] (Emphasis added.)

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[1] Ann van Wynen Thomas and A. J. Thomas. Jr.. *The Organization of American Sta* 1963. Southern Methodist University Press. Dallas. p. 290.

[2] See Report of the Secretary General of the Organization of American States 19 *op. cit.*. p. 48 (Ann. 37).

4.40. Moreover, to cite a few instances out of an abundant literature, Mr. William Sanders, Alternate Delegate on the Delegation of the United States at the Conference of Bogotá, observed, shortly after the end of the negotiation of the Pact, when commenting on the draft which finally prevailed in the definitive version of the treaty

> "in theory no dispute could escape settlement, either by acceptance by the parties of the results of Good Offices, Mediation, Investigation or Conciliation, or *failing such acceptance*, by a binding award reached through judicial or arbitral settlement of all disputes, whether legal or *non-legal in character*" (emphasis added).

Here again it is to be noted that the two necessary prerequisites to an Application to the Court are the failure of conciliation and of arbitration proceedings.

4.41. In an article on "L'évolution des idées en matière de règlement pacifique des conflits" which appeared in the *Revue générale de droit international public* in 1951, Professor Louis Delbez adopted an analogous interpretation . In describing, in that article, the system established by the Pact, he said:

> "Normalement, la voie est la suivante. En premier lieu, la procédure des "bons offices et de la médiation". En cas d'échec, la procédure d'"enquête et de conciliation", qui se déroule devant une commission d'enquête et de conciliation, qui devra donner son avis dans les six mois. En troisième lieu, procédure devant la CIJ. *Si la procédure de conciliation échoue*, dispose l'article 32, l'une quelconque des parties "aura le droit de porter la question devant la CIJ de la façon établie par son statut. La compétence de la Cour sera obligatoire conformément au paragraphe 2 de l'article 36 du même statut"! *Et voilà la Cour chargée de reprendre et de parachever l'œuvre de la commission de conciliation.*" (Emphasis added.)

William Sanders, *The Organization of American States in International Conciliation*, 1948, pp. 382-417, particularly p. 401.

The opinion of Professor Delbez is certainly correct as regards the binding connection between a unilateral Application to the Court and prior failure of Conciliation and of recourse to Arbitration, but the way in which it is worded seems to go too far. For the wording lends itself to the idea that there is also an automatic interlinking between the other procedures, the procedures in Chapters II and III. Yet the Pact of Bogotá does not provide for this, and, moreover, that interpretation is incompatible with the provisions of Article III thereof.

L. Delbez, "L'évolution des idées en matière de règlement pacifique des conflits", *RGDIP*, 1951, pp. 5-22, particularly p. 21. *Translation*:

> "Normally, the route is as follows. First comes the procedure of 'Good Offices and Mediation'. In the event of failure, there comes the 'Investigation and Conciliation' procedure which takes place before a Commission of Investigation and Conciliation. The Commission has to deliver its Opinion within six months. Thirdly comes the procedure before the International Court of Justice. Article 32 provides that *if the Conciliation procedure fails*, either party 'shall have the right to bring the question before the International Court of Justice in the manner laid down by the Statute of the Court. The jurisdiction of the Court will be compulsory pursuant to Article 36, paragraph 2, of the same Statute.' *Hence in this situation the Court has the duty of taking over and of completing the work of the Conciliation Commissions.*"

It thus emerges that a reading of the Pact carried out by an analyst who had absolutely nothing to do with the Bogotá negotiations is in line with the interpretation of one of the persons who took part in the said negotiations.

4.42. The same observation was made by Professor René-Jean Dupuy in his work entitled *Le nouveau panaméricanisme*, published in 1956. When commenting on the relevant provisions of the Pact, he said:

> "La Cour de La Haye a profité de l'aspiration à la juridiction obligatoire qui s'est manifestée dans les Amériques. Le pacte de Bogotá, dans son chapitre IV, article 31, proclame celle de la Cour de La Haye. Se référant à l'article 36, paragraphe 2, la juridiction de la Cour sur tous les différends juridiques, un des Etats parties à un litige pourra citer l'autre devant la Cour *lorsque la procédure de conciliation aura échoué ou que les parties n'auront pas convenu d'un recours à l'arbitrage*."[1] (Emphasis added.)

4.43. In 1966, two publications appeared, both bearing the same title, *The Inter-American System*, although written by different authors. Both of them, however, in interpreting Article XXXI in correlation with the following Articles, placed equal emphasis on the prerequisites for a possible unilateral Application to the Court.

The first of these works is of particular authority because it was prepared by the Inter-American Institute of International Legal Studies under the responsibility of its Secretary General F. V. García-Amador. That Institute had decided "to bring out a publication that would contain the basic Instruments of the Inter-American System, with annotation". After having described the inter-locking of the procedures for settlement in the Pact and the articulation thereof established by Chapter IV concerning judicial settlement, the authors observed:

> "The new system established obligatory judicial settlement as the definitive method for the solution of controversies. The said settlement was to be achieved through the International Court of Justice and in accordance with its Statute. Arbitration, on the other hand, would only be obligatory when the Court declared itself to be without jurisdiction to hear the controversy. Therefore, when examining the general outline of the system for peaceful settlement established in the Pact, as is done here, it should be pointed out, above all, that by virtue of Article XXXI the High Contracting Parties 'declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning . . .'. There follow the four categories of dis-

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[1] R.-J. Dupuy, *Le nouveau panaméricanisme, l'évolution du système inter-américain vers le fédéralisme*, Pedone, 1956, pp. 172-173. *Translation*:

> "The Court at The Hague has profited from the desire for a compulsory jurisdiction which has made itself felt in the Americas. Article 31 of Chapter IV of the Pact of Bogotá proclaims that the Court at The Hague shall have such compulsory jurisdiction. Referring to Article 36, paragraph 2, of the Statute of the Court, it acknowledges that the jurisdiction of the Court is compulsory in respect of all legal disputes. One of the States party to a dispute can summon the other before the Court *when the conciliation procedure has failed or when the parties have not agreed upon recourse to arbitration*."

> putes listed in paragraph 2 of Article 36 of the Statute of the International Court of Justice. In this sense, the pact itself constitutes an unconditional declaration of the type foreseen in that article.
>
> The foregoing notwithstanding, the compulsory nature of the judicial settlement is subject, to be precise, to the fact that the Conciliation Procedure established in the Pact or by the decision of the parties has not led to a solution and, in addition, that the said parties have not agreed on an Arbitral Procedure. *Only in these circumstances may one of the parties exercise its right to have recourse to the Court* and the other, therefore, be subject to its jurisdiction (Article XXXII)." (Emphasis added.)

4.44. The other work on the Inter-American system, which appeared in 1966, is by Mr. Gordon Connel-Smith. After having described the substance of Article XXXI, he then notes:

> "Any disputant is entitled to have recourse to the International Court *in the event of failure of Conciliation or agreement upon Arbitral Procedure.*" (Emphasis added.)

4.45. Some years later, there took place an important international symposium on the Judicial Settlement of International Disputes, organized by the Max Planck Institute for Comparative Public Law and International Law. It was attended by some of the top specialists on the subject. Two of the persons who prepared papers analysed the texts which are of interest to us, and their conclusions, which were published in 1974, are in perfect agreement.

The first was Francisco Garcia-Amador, acting on this occasion in a personal capacity. After mentioning the substance of Article XXXI, which acknowledges the compulsory nature of the jurisdiction of the Court according to the terms of Article 36, paragraph 2, of the Statute, he says:

> "Chapter Four of the Pact of Bogotá provides for the so-called 'Judicial Procedure', beginning with a provision according to which the H.C. Parties 'declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning . . .' the four categories of disputes listed in paragraph 2 of Art. 36 of the Statute of the ICJ. Thus, the Pact itself constitutes an unconditional declaration of the type foreseen in that article.
>
> *However, two conditions are to be met before a party to the dispute is entitled to have recourse to the ICJ* in the manner prescribed in Article 40 of its Statute and before the Court has jurisdiction in accordance with Article 36 (1) of the said Statute: namely, when the Conciliation Procedure previously established in the Pact or by agreement of the parties does not lead to a solution and the said parties have not agreed upon an arbitral procedure." (Emphasis added.)

The second person who delivered a paper at the symposium was Hans von Mangoldt, who expressed himself in the following terms:

Inter-American Institute of International Legal Studies, *The Inter-American System, its Development and Strengthening*, 1966, Oceana, Dobbs Ferry, New York, p. 79.

Gordon Connel-Smith, *The Inter-American System*, Oxford University Press, 1966, p. 211.

> "One special feature of the Pact is that after the failure of Concilia-
> tion and in the absence of a compromis to arbitrate, unilateral Applica-
> tion to the International Court of Justice is admitted in all legal disputes
> as defined in Article 36 (2) of the ICJ Statute . . ."[1]

4.46. The conjunction and the convergence of the set of opinions that hav
just been mentioned is impressive in itself. Moreover, the reading that i
given in those opinions of Chapter IV of the Pact of Bogotá, from whicl
Article XXXI is undetachable, can be said to respect the spirit and the logi
of the text, and also its letter, although not so faithfully as the first interpreta
tion, as proposed in this Memorial. Indeed, this interpretation by the major
ity of authors does not attach the same importance as the first interpretatio
to the fact that Article XXXI makes reference to Article 36, paragraph 2, o
the Statute, while Article XXXII makes reference to Article 36, paragraph 1
This interpretation seems to regard these Articles as a blanket reference t
the Statute of the Court, insisting upon the fact that it is by reference to thi
provision that the jurisdiction of the Court is defined. Nevertheless, as will b
discussed below, it coincides in any event, on an essential point, with the firs
interpretation, to the extent that it does establish a direct link between th
rules laid down by the Pact for access to the Court and those defined b
Article 36 (2) of the Statute of the Court.

4.47. The second alternative interpretation clearly involves a pertine
distinction between two different things: firstly the "compulsory" nature
the jurisdiction of the Court, such as it arises from Article XXXI of the Pa
which is a sort of copy of Article 36, paragraph 2, of the Statute of the Cour
and secondly the "automatism" that the authors of the Pact desired to intr
duce into its provisions in order to render it impossible for the parties to ha
recourse to some non-peaceful means of settling their disputes.

4.48. In fact, it is true that these are two perfectly distinct matters. In t
Pact, just as on the basis of Article 36, paragraph 2, of the Statute, the jur
diction of the Court is compulsory when an Application is lodged before
unilaterally. However, as the text of Article XXXII then says, the right
submit an Application unilaterally is itself subject to conditions. Until su
time as Conciliation has failed and until such time as it is clear that the part
are unable or have refused to submit to the Arbitration provided for in Ar
cle XXXII[2], neither of the two parties may take the unilateral route which
offered to them by Article XXXII, and lodge an Application with the Cou

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[1] F. Garcia-Amador, "To which extent and for which subject-matters is it advisabl
create and develop special judicial bodies with a jurisdiction limited to certain regions
to certain subject-matters?", pp. 83-99, particularly p. 92 and H. von Mangoldt, "Arbit
tion and Conciliation", pp. 419-551, particularly p. 446, in *Judicial Settlement of Inter
tional Disputes*, Max Planck Institute for Comparative Public Law and International L
an International Symposium.

[2] It is recalled that in the Pact of Bogota there are three types of possible Arbitratio
There is the Arbitration which may be directly chosen by the parties on the basis of A
cle XXXVIII of the Pact. Then there is the Arbitration upon which the parties must
tempt to agree in the event of failure of negotiations: this is the Arbitration provided
in Article XXXII. Finally, there is the Arbitration which in principle is automatic and
evitable as regards the party against which it is instituted. This Arbitration is provided
in the case where the Court, upon a unilateral Application having been duly submitte
it in conformity with the requirements laid down by Article XXXII, has nevertheless
clared itself incompetent for any of the reasons mentioned in Article III or in Art
XXXIV. This latter type of arbitration is provided for in Article XXXV of the Pact.

Hence until those conditions are met the Court itself will remain without competence. We shall revert later to the fact that this is of itself decisive in the present case in leading to the conclusion that the Court has no jurisdiction under the Pact of Bogotá.

4.49. The automatization, the inevitability of peaceful settlement, is indeed provided for by the Pact, but not in Article XXXI thereof. It is further on, in Article XXXV, that this appears, where the Pact provides:

> "If the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the High Contracting Parties obligate themselves to submit it to arbitration, in accordance with the provisions of Chapter Five of this Treaty."

It should also be noted that if one adheres to the strict meaning of the above sentence, Arbitration of last resort (not to be confused with the Arbitration mentioned in Article XXXII) is not yet of itself inevitable, because it remains available only in the cases where the Court has declared itself to be without jurisdiction "for any *other* reasons" than those mentioned in Articles XXXIII and XXXIV[1]. The French text of the Treaty is the only text that extends the obligation to embark on Arbitration of last resort to *all* the cases where the Court acknowledges that is has no jurisdiction. (It reads as follows: "Si *pour une raison quelconque*, la Cour se déclarait incompétente . . .", which translates as: "If *for any reason whatsoever*, the Court declares itself to be without jurisdiction . . .".)

4.50. However, without going into this side issue, it remains the case that in any event it is not the Court itself which is at the end of the procedural road provided for by the Pact, but Arbitration, political or juridical, depending on the nature of the dispute.

4.51. It is true that the jurisdiction of the Court is "binding". This means that when a party is brought before it by another party having used its right to submit an Application unilaterally, it cannot deny that the Court has jurisdiction. However, this does not mean that the jurisdiction of the Court is automatic. The Court will only hear the case provided that there is no reservation excluding jurisdiction and provided also that the two conditions laid down in Article XXXII are met.

4.52. Now how does all this relate to the present case? Even if Nicaragua were able to demonstrate the existence of a dispute between itself and Honduras "which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels" (Art. II), evidence of which, as we have seen, has not been forthcoming, could it, beyond that, show firstly that an unfruitful attempt at Conciliation has taken place between the Parties, and secondly that after noting the failure of the Conciliation attempt,

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[1] It should be borne in mind that Article XXXIII reiterates in another form the rule laid down in Article 36, paragraph 6, of the Statute of the Court, according to which: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." Article XXXIV covers the cases in which the Court has declared itself incompetent because it has ruled that the questions in dispute fall within the national jurisdiction of the States (pursuant to Article V of the Pact), or because those questions have already been settled by means of an agreement between the parties, or by an Arbitration Award or by a decision of an international court (Art. VI), or because, as regards the protection of the nationals of one of the parties, the said nationals have not exhausted the internal legal actions available to them before the courts of the party concerned (Art. VII).

Honduras and Nicaragua have failed to agree upon recourse to Arbitration?
Of course not!

So it is understandable that Nicaragua has carefully avoided any reference
in its Application to Article XXXII, which, however, is indissociable from
Article XXXI in the opinion of most authors.

4.53. In the view of certain other commentators of the Pact, it should be
conceivable, in reliance on a broad interpretation of Article III of the Pact[1], for
the parties to be empowered to submit to the International Court of Justice *by
mutual agreement*, without having first to go through the stages of failed Conciliation and failed attempt at Arbitration, as provided for in Article XXXII.

There is nothing in the body of the Pact itself that expressly permits this
possibility. Nevertheless, the reason for mentioning this possibility is that in
1949 the Secretary General of the Organization of American States was one
of the very few commentators on the Pact, if not the only one, who envisaged
this hypothetical case. Commenting on the right of choice offered by the Pact
between various procedures (hence he had in mind, without expressly saying
so, the rule laid down in Article III) he said:

> "It might occur, for example, that *from the time of disruption of di*
> *rect negotiations* in a given case, there might be *agreement* to submit th
> dispute to arbitration or to the International Court of Justice, withou
> resorting to conciliation or good offices and mediation."[2] (Emphasi
> added.)

Once again, the difficulty that he has in admitting such an interpretatio
comes from the fact that it is not based on any express provision of the Pac
However, supposing that it is admissible, a supposition that merits examina
tion, given the standing of the author from whom it emanates, that possibilit
as will be seen, would itself be subject to two conditions, neither of which
met in the present case.

Firstly, it would be necessary, in the opinion of the Secretary General, f
negotiations to have taken place previously between the parties, and for thos
negotiations to have failed. However, it is established that nothing of the kin
took place between Nicaragua and Honduras concerning the subject-matt
of the Application of Nicaragua.

Secondly, and above all, under Article III, an approach to the Court wou
be made on the basis of an express agreement, a *compromis* between the tw
States. In other words, such an approach cannot consist of a unilateral App
cation as is provided for in Articles XXXI and XXXII of the Pact. Moreove
a unilateral Application, as has been amply demonstrated, requires that t
two stages of Conciliation and of an attempt at Arbitration should first ha
failed.

4.54. It seems, in any event, that an illustration of this flexible practice
to be found in the circumstances in which the same two States, Honduras a
Nicaragua, were led to submit a dispute to the Court which resulted in t

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[1] Article III reads as follows:

> "The order of the pacific procedures established in the present Treaty does not s
> nify that the parties may not have recourse to the procedure which they consi
> most appropriate in each case, or that they should use all these procedures, or t
> any of them have preference over others except as expressly provided."

[2] See Report of the Secretary General of the Organization of American States, 19
op. cit., p. 49 (Ann. 37).

Judgment of 18 November 1960 in the case concerning the *Arbitral Award Made by the King of Spain on 23 December 1906*[1].

In that case, unlike the present case, there evidently was a difference of a properly bilateral character, which went back almost to the rendering of the Arbitration Award of 1906. Hence the dispute had lasted, at the time when it was submitted to the Court, for somewhat more than 40 years! It had gone through successive phases of attempts at negotiation: North American Good Offices (1918-1920), then renegotiations, then Tripartite Mediation (Costa Rica, United States and Venezuela in 1937). Those different stages are described in the Judgment of the Court of 1960:

> "Certain incidents between the two Parties having taken place in 1957, the Organization of American States, acting as a consultative body, was led to deal with the dispute with the result that on 21 July 1957, Honduras and Nicaragua reached an agreement at Washington by virtue of which they undertook to submit 'to the International Court of Justice . . .' the disagreement existing between them with respect to the Arbitral Award handed down on 23 December 1906."[2]

4.55. It is thus to be noted that the diplomatic circumstances and the conditions in which the jurisdiction of the Court was acknowledged by the two Parties were utterly different from those in the present case. On the contrary, such circumstances and conditions were in line with those mentioned by the Secretary General in his report of 1949. In any event, the Honduro-Nicaraguan Agreement of 21 July 1957 (Ann. 38A), while it invokes the application of the Pact of Bogotá, does not expressly mention either Article XXXII or Article XXXI.

4.56. The judicial procedure in the case of the Arbitration Award was indeed set in motion by a unilateral Application submitted by Honduras. However, as stated by Judge Roberto Ago in his individual opinion on the Judgment of 26 November 1984 in the *Military and Paramilitary Activities in and against Nicaragua* case, apart from the fact that the Applicant invoked the recognition of the compulsory jurisdiction of the International Court of Justice granted by the two States on the basis of Article 36, paragraph 2 *(c)*, it also relied on the Agreement of 21 July 1957. Moreover Nicaragua, in its Counter-Memorial, acknowledged that the said Agreement had the legal status of a special agreement[3]. The consensual basis of the competence of the Court was thus firmly established and, obviously, it was established without any reference to Article XXXI of the Pact of Bogotá.

4.57. To return to the analysis of the implications of the interpretation by majority doctrine of Article XXXI, and after having emphasized the fact that, according to such interpretation, Article XXXI of the Pact of Bogota is not autonomous as compared with the other provisions of Chapter IV, within which it is situated, and that its dual function is to establish the compulsory (not automatic) nature of the jurisdiction of the Court and to define its competence by reference to the terms of its Statute, it is now useful to examine in greater detail the manner in which, under this interpretation, the articulation is established between Article 36, paragraph 2, of the Statute of the International Court of Justice and Article XXXI of the Pact. It will be noted that the connection between the two provisions and the "application" of the reservations which, being made to one provision, are automatically applicable to the other, results both from this second interpretation and from the more literal first interpretation of the Pact, as has been described above.

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[1] *I.C.J. Reports 1960*, pp. 192-218.

[2] *Ibid.*, p. 203.

[3] *I.C.J. Reports 1984*, p. 529, para. 35.

Indeed, even if, under this second interpretation, Article XXXI does not necessarily mean that a unilateral declaration of acknowledgment of the jurisdiction of the Court is made by each Party in application of the Pact, reasons still exist which lead to the same conclusion, but which this time are based on an analysis of the substantial bonds between Article XXXI of the Pact and Article 36, paragraph 2, of the Statute of the Court.

4.58. The bond between Article XXXI and Article 36, paragraph 2, of the Statute of the Court as regards both wording and function must be emphasized once again on this occasion. Article XXXI is, from both those two points of view, a copy of the other, inserted into a treaty that is more broadly devoted to the whole set of procedures for the peaceful settlement of disputes. In particular, the expression in Article XXXI, according to which the Member States "recognize . . . the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement . . . in all disputes of a judicial nature . . ." (Art. 36, para. 2, says "in all legal disputes") practically constitutes a verbatim reproduction of the provision of the Statute to which it refers. The same is true of the list of disputes that lend themselves to judicial procedure, which is worded as follows:

> "*(a)* the interpretation of a treaty;
> *(b)* any question of international law;
> *(c)* the existence of any fact which, if established, would constitute the breach of an international obligation;
> *(d)* the nature or extent of the reparation to be made for the breach of an international obligation."

The wording is precisely the same in the two Articles, i.e., Article XXXI of the Pact and Article 36, paragraph 2, of the Statute, whether the texts be read in the English, French or Spanish versions (Anns. 34 through 36).

4.59. This is what was observed, for example, shortly after the negotiation of the Pact, by one of the persons who took part in the negotiations, the Mexican Ambassador Roberto Cordova, a former Judge of the Court, in an article published in the *Inter-American Legal Yearbook* for 1948: "El articulo 31 . . . no hace sino reproducir el articulo 36 del Estatuto de dicha Corte"[1] ("Article 31 . . . does not do anything other than reproduce Article 36 of the Statute of the said Court".)

In other words, whether the more literal interpretation of Article XXXI is adopted, or the interpretation favoured by majority doctrine, Article XXXI does not create a basis for the jurisdiction of the Court that is independent of the recognition thereof under Article 36, paragraph 2, of the Statute. Whether one adopts the initial theory, which is preferable because it is the most faithful to the precise language of the text of Article XXXII of the Pac (which refers to Article 36, paragraph 2, of the Statute, as opposed to Articl XXXI, which refers to Article 36, paragraph 1), or whether one adopts th theory upheld by the majority of authors, according to whom Article XXX gives a definition *ratione materiae* of the jurisdiction of the Court, but remain subject, in so far as the conditions for unilateral seisin of the Court are concerned, to the fulfilment of the conditions laid down in Article XXXII, the same result is reached as to the links between Article XXXI and Article 36, paragraph 2, of the Statute of the Court: such links are substantially links of identity, which render Article XXXI completely dependent on the conditions of Article 36, paragraph 2. This is, moreover, what Nicaragua itself, in accordance with the second interpretation, affirmed in its Memorial in the *Military and Paramilitary Activities in and against Nicaragua* case[1], in which it states that Article XXXI *is* really a declaration of acknowledgment of the compulsory jurisdiction of the Court on the basis of Article 36, paragraph 2. From a legal point of view it must be recognized that nothing in the letter or in the spirit of that Article prevents the acknowledgment of jurisdiction being made collectively.

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[1] Roberto Córdova, "El tratado americano de soluciones pacíficas. Pacto de Bogotá" in *Anuario jurídico interaméricano*, 1948, p. 12.

4.60. The language of Article XXXI, which repeats Article 36, paragraph 2, word for word, and the express reference that it establishes, clearly confirms that this collective will was indeed the will of the Parties. It follows that the scheme of Article XXXI, which, according to majority opinion, is indissociable from Article XXXII in the internal framework of the Pact of Bogota, is equally dependent on the scheme of Article 36, paragraph 2, of the Statute of the International Court of Justice and on the conditions on which the optional declarations accepting the compulsory jurisdiction of the Court, signed by the States, establish its jurisdiction. Therefore, when a conditional declaration of acceptance of the jurisdiction of the Court is made by a State on the basis of Article 36, paragraph 2, of the Statute, the conditions concerned operate between parties to the Pact of Bogotá just as much as they do with States that are not members of the Pact[2].

D. THE EFFECT OF RESERVATIONS IN THE CONTEXT OF THE ALTERNATIVE ANALYSIS OF ARTICLE XXXI OF THE PACT

1. The Effect of Reservations to Declarations concerning Article 36, Paragraph 2, of the Statute of the Court

4.61. In the context of the more literal interpretation of the Pact, adopted in the present Memorial at paragraphs 4.12 and 4.35 to 4.36 above, it has been seen that the reservations made with respect to the unilateral declaration of acknowledgment of the jurisdiction of the Court, made by Honduras on

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[1] Memorial of Nicaragua, para. 93, note 2, and p. 52.

[2] Thus the Reservation to the Pact of Bogota made by the United States upon its signature (the United States has not ratified the Treaty) appears in itself to be superfluous. For the third paragraph of the Reservation states:

> "The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory *ipso facto* and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court, and in force at the time of the submission of any case."

However, in reality that Reservation is systematically made by the United States by way of precaution in all the multilateral treaties to which it is a party and which make provision for the jurisdiction of the Court. It is in a sense a stylistic clause. On this American practice, see Joseph Summers, "Present Trends in the Policy of the U.S. on the Legal Settlement of International Disputes", *Virginia Journal of International Law*, 1963, pp. 201-209.

22 May 1986, obviously apply as conditions for the seisin of the Court on the basis of Article XXXI of the Pact of Bogotá, since the declaration has the very purpose of supplementing that Article, by accomplishing the requirement expressed therein.

If one adopts the second alternative interpretation, it must be observed that, as a result of the substantive link, which is also acknowledged under this interpretation, between Article XXXI and Article 36, paragraph 2, of the Statute, the result is the same. This observation is of course of direct relevance to the present case. Indeed, it should be remembered that Honduras rendered its declaration on the jurisdiction of the International Court of Justice on 22 May 1986 subject to four Reservations. The analysis that has been made above has made it clear that two Reservations fully apply in the present case. They are therefore just as effective within the framework of Article XXXI of the Pact as they are on the basis of Article 36, paragraph 2, of the Statute.

2. *Effect of Reservations concerning the Pact of Bogota*

4.62. Conversely, State practice has acknowledged the bond established between, this time, the Pact and the acknowledgment of the compulsory jurisdiction of the Court on the basis of its Statute.

The practice occurred in the previous case brought before the Court involving Honduras and Nicaragua (the *King of Spain* case). In that case, as has been seen, the basis of the jurisdiction of the Court, which was acknowledged both by Nicaragua and by Honduras, consisted of the Agreement made for that purpose between the two States and concluded on 21 July 1957.

4.63. Although the circumstances of that case could perhaps have constituted grounds for a unilateral invocation of the competence of the Court under Article XXXII (because in that case there was an attempt at Conciliation which failed, and because the contested Arbitration of 1906 was at the origin of the dispute), the Parties nevertheless deemed it necessary to have recourse to a *compromis* in order validly to submit an Application to the Court. That was necessary *in order to be able to circumvent the obstacle consisting of the Reservation made by Nicaragua to the Pact of Bogota.* For the very purpose of that Reservation was to prevent an Application to the Court by Honduras concerning the applicability of the Award of 1906[1].

The clear assumption was that the effect of the Nicaraguan Reservation, apart from the case of a special agreement overriding it, automatically extended to the provisions of the Statute. Since the Reservation applied to Article XXXI, it also applied, by virtue of that very fact, to that Article's reference provision, namely Article 36, paragraph 2. Hence it was that a Nicaraguan

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[1] The text of the Nicaraguan Reservation reads as follows:

> "The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogotá) wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.
>
> Hence the Nicaraguan Delegation reiterates the statement made on the 28th of the current month on approving the text of the above mentioned Treaty in Committee III."

Reservation to the pact of Bogotá prevented jurisdiction based on the Statute. Similarly, but conversely, we now have a Honduran Reservation to the Statute which prevents any invocation of the Pact of Bogotá (Art. XXXI).

4.64. This identity of the schemes of acknowledgment of the competence of the Court under the Pact and under the Statute is the only construction which avoids the risk of incompatibility between two distinct declarations made by one and the same State and both establishing the jurisdiction of the Court. For otherwise that State would risk being exposed to the jurisdiction under certain conditions pursuant to one declaration, and under other conditions pursuant to the other declaration. Such could particularly be the case where one of the declarations was rendered subject to Reservations, whereas the other was not. It should also be borne in mind, as already explained above (para. 4.24), that in the event of contradiction between the conditions for an Application to the Court on the basis of a regional pact and on the basis of the Statute of the Court as an integral part of the United Nations Charter, Article 103 of the Charter applies, giving precedence to the legal régime established by the general system.

4.65. Doubtless such a duality of schemes of recognition is theoretically not inconceivable. For example, many cases exist in which, in parallel to a declaration under Article 36, paragraph 2, made unilaterally and rendered subject to reservations, a State has agreed to bind itself without reservations in its relations with another State, for example in a bilateral treaty of friendship and co-operation. The State concerned does so because, having regard to the nature of the relationship that it has traditionally had with that other State, it takes the view that there is no point in restricting the competence of the Court, acknowledged elsewhere on the basis of Article 36. But that is the difference between jurisdiction under Article 36, paragraph 2, and Article 36, paragraph 1, of the Statute. Different conditions are contemplated for jurisdiction under Article 36, paragraph 2.

3. *Examination of the Intention of Honduras in the Present Case*

4.66. The whole point here is that on this subject everything depends on the clear expression of the intention of the State concerned, because jurisdiction ultimately rests on consent.

In the present case, there is no doubt at all about the intention of Honduras. For it is a fact that, although no legal consideration rendered such formality necessary, with a view to preventing any ambiguity as to the interpretation of its intention, the Government of the Republic of Honduras, through its Minister of Foreign Affairs, adopted the course, scarcely four days later, of communicating to the Secretary General of the Organization of American States the text of the Honduran declaration of 22 May 1986 altering its previous declaration and stating expressly that the new Reservations applied to jurisdiction arising from the Pact of Bogota. That communication was made on the basis of a parliamentary authority adopted by the National Congress of Honduras by Decree No. 79-86 of 22 May 1986[1]. That declaration was then transmitted to all the member States of the Organization of American States by the Secretary General thereof, on 30 June 1986.

Moreover, so far as the Government of Honduras is aware, no objection, either from Nicaragua or from any other country was raised by any of the member States of the Organization upon the receipt of the new version of the Declaration of Honduras[1].

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[1] Ann. 39.

4. Conclusions

4.67. Thus, to summarize all of the views put forward above, it must be noted that the Pact of Bogotá does not offer any basis of jurisdiction in the present case, and that it does not (as was observed at the very beginning of these pleadings) offer any basis for the admissibility of the Application of Nicaragua.

4.68. Under the most literal, and therefore the most simple, interpretation of the terms of the Pact, Article XXXI, in establishing the obligatory jurisdiction of the Court, at the same time requires the additional subscription, by each of the Parties, of a unilateral declaration of acknowledgment of its jurisdiction, as provided for by Article 36 (2) of the Statute of the Court, to which Article XXXI of the Pact makes express reference. The reservations attached to such declarations, as in the case of the declaration of Honduras of 22 May 1986, therefore apply both in the context of the application of Article XXXI and on the sole basis of the Honduran declaration itself.

4.69. Under the alternative interpretation presented above, in order to take into account the opinion expressed by the majority of the most well-informed authors, there are not only one but two series of reasons for this lack of any basis of jurisdiction. The two series of reasons are independent of each other, and each of them would of itself be sufficient. For neither an analysis of the Pact as such, nor an analysis of the terms of Article XXXI, which introduces Chapter IV of the Pact, produces any ground on which the jurisdiction of the Court may be founded in this case.

(i) Article XXXI is in itself indissociable from the other provisions of Chapter IV. That Article renders the jurisdiction of the Court compulsory in the case where an Application is submitted to the Court unilaterally by a Latin American State which is a party to a dispute with another State having ratified the Pact of Bogotá. However, such a unilateral Application is itself rendered subject by Article XXXII to two conditions: a Conciliation Procedure must have been exhausted without fruitful result, and Arbitration must manifestly have been rejected. Yet neither of those two conditions is met in the present case.

4.70. A broad interpretation of the Pact, and in particular of Article III thereof, could possibly permit States in dispute to submit the matter directly to the Court without going through the prerequisites provided for in Article XXXII and mentioned above. However they could only do so, as appears from Article III and as was pointed out by the Secretary General of the Organization of American States just after the negotiation of the Pact, by means of a *compromis*. No such *compromis* exists in the present case.

(ii) Moreover, the very wording of Article XXXI makes it perfectly clear that that Article is itself derived from Article 36, paragraph 2, of the Statute of the International Court of Justice, and that it has no autonomy whatsoever as regards Article 36, paragraph 2. Therefore the reservations to which the declaration by Honduras of its acknowledgment of the jurisdiction of the International Court of Justice of 22 May 1986 was rendered subject are reservations which also apply to the declaration made jointly by the States party to the Pact of Bogotá on the basis of Article XXXI thereof. Those reservations, as has been seen above, expressly exclude the jurisdiction of the Court in disputes having a subject-matter such as the subject-matter covered by Nicaragua's Application.

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[1] Anns. 40B and 41.

This identity of scheme between a declaration under Article XXXI and a declaration under Article 36, paragraph 2, of the Statute is moreover confirmed by the intention of Honduras, which was duly communicated to all the American States, and to which neither Nicaragua nor any other State raised any objection.

Thus, whatever may be the interpretation adopted, be it the more literal interpretation or the alternative interpretation, the Court clearly has no jurisdiction in the present case.

SUBMISSIONS

In view of the facts and arguments set forth in the preceding parts of this Memorial, the Government of Honduras requests that it may please the Court to adjudge and declare that:

As to Admissibility:

The Application of Nicaragua is inadmissible because:

1. It is a politically-inspired, artificial request which the Court should not entertain consistently with its judicial character.

2. The Application is vague and the allegations contained in it are not properly particularized, so that the Court cannot entertain the Application without substantial prejudice to Honduras.

3. Nicaragua has failed to show that, in the opinion of the Parties, the dispute cannot be settled by direct negotiations, and thus Nicaragua fails to satisfy an essential precondition to the use of the procedures established by the Pact of Bogotá, which include reference of disputes to the International Court of Justice.

4. Having accepted the Contadora process as a "special procedure" within the meaning of Article II of the Pact of Bogotá, Nicaragua is precluded both by Article IV of the Pact and by elementary considerations of good faith from commencing any other procedure for pacific settlement until such time as the Contadora process has been concluded; and that time has not arrived.

As to Jurisdiction:

The Court is not competent to entertain the Application of Nicaragua because:

1. The dispute as alleged by Nicaragua is excluded from the jurisdiction of the Court by the terms of the Honduran declaration of 22 May 1986, and such declaration applies whether the jurisdiction is alleged to exist on the basis of Article XXXI of the Pact of Bogotá or Article 36, paragraph 2, of the Statute of the Court.

2. Alternatively, Article XXXI cannot be invoked as a basis of jurisdiction independently of Article XXXII, and the latter Article precludes any unilateral Application to the Court except where:

(a) conciliation procedures have been undergone without a solution, *and*
(b) the Parties have not agreed on an arbitral procedure.

Neither condition is satisfied in the present case.

3. Jurisdiction cannot be based on Article 36, paragraph 1, of the Statute of the Court because States parties to the Pact of Bogotá have agreed in Article XXXII that a unilateral Application, based on the Pact of Bogotá, can only be made when the two conditions enumerated in *(a)* and *(b)*, paragraph 2 above, have been satisfied, and such is not the case with the Application of Nicaragua.

(Signed) Mario CARIAS,
Agent of the Republic of Honduras.

Volume II

ANNEXES TO THE MEMORIAL OF HONDURAS

Annex 1

RESOLUTION II APPROVED BY THE XVIIth MEETING OF CONSULTATION OF MINISTERS OF FOREIGN RELATIONS OF THE ORGANIZATION OF AMERICAN STATES (OAS), 23 JUNE 1979

(Translation)

17th Meeting of Consultation of
Ministers of Foreign Relations
21 September 1978,
Washington, D.C.

OEA/Ser.F/II.17
Doc. 40/79, Rev. 2
23 June 1979
Original: Spanish.

Resolution II

(Approved by the 7th Plenary Session held on 23 June 1979)

The 17th Meeting of Consultation of the Ministers of Foreign Relations,

Considering:

That the people of Nicaragua are currently suffering the horrors of a cruel arms struggle which is causing immense suffering and loss of human life and has brought the State to a grave political and social and economic convulsion;

That the inhuman conduct of the ruling dictatorial régime in that country, as evidenced by the report of the Inter-American Commission of Human Rights, is the fundamental cause of the dramatic situation which the Nicaraguan people is undergoing;

That the spirit of solidarity that the relations in this hemisphere inspire renders ineluctable the obligation of the American countries to undertake all efforts within their reach to put an end to the spilling of blood and to avoid the prolongation of this conflict continuing to disturb the peace of the continent.

Declares:

That the solution to the grave problems belongs exclusively to the Nicaraguan people.

That in the opinion of the 17th Meeting of Consultation of the Ministers of Foreign Relations this solution should draw its inspiration from the following bases:

1. Immediate and definitive replacement of the Somoza régime.

2. Installation in Nicaraguan territory of a democratic government, the composition of which should include the principal representative groups which oppose the Somoza régime and which reflects the free will of the people of Nicaragua.

3. Guarantee of the respect for human rights of all Nicaraguans without exception.

4. The holding of free elections as soon as possible, that will lead to the establishment of a truly democratic government that guarantees peace, freedom and justice.

Resolves:

1. To encourage the member States to take all actions within their ability to facilitate a durable and pacific solution to the Nicaraguan problem on the above-indicated basis, scrupulously respecting the principle of non-intervention and abstaining from any action which would go contrary to such basis, or which would be incompatible with a durable and pacific solution to the problem.

2. To engage its efforts to promote humanitarian assistance to the population and to contribute to the social and economic recovery of the country.

3. Maintain open the 17th Meeting of Consultation of Ministers of Foreign Relations so long as the present situation subsists.

Annex 2

Guasaule Declaration, Joint Communiqué Issued by His Excellency the President of the Republic of Honduras, General Policarpo Paz Garcia, and the Co-ordinator of the National Reconstruction Governing Junta of Nicaragua, Commander in the Revolution Daniel Ortega Saavedra, as a Result of Their Meeting on 13 May 1981 at the Frontier Station of El Guasaule, Nicaragua, 13 May 1981

(Translation)

On invitation by the National Reconstruction Governing Junta of Nicaragua, the President of the Republic of Honduras, General Policarpo Paz Garcia held a meeting with the Co-ordinator of the National Reconstruction Governing Junta of Nicaragua, Commander in the Revolution Daniel Ortega Saavedra.

During the conversations which were held, both representatives, in an atmosphere of great cordiality, as is proper, between representatives of sister countries exchanged points of view on matters of common interest, showing a high spirit of Statesmanship which characterizes the two countries sharing a common origin and destiny.

Foremost in the matters dealt with at the meeting was the analysis of the problems that have arisen along the frontier between the two countries, independent of the wishes of the Governments of Nicaragua and Honduras, resulting in an apparent degree of mistrust.

During the meeting, both representatives agreed to call on the media to moderate the tone and treatment being given to the problems which had been arising, as the best contribution which such media could make to the process of a coming together and peaceful solution to any problem which could exist.

They also reiterated their firm conviction that the solution to any problem should be sought by means of a direct dialogue in accordance with the rules laid down by International Law.

Both representatives agreed on a programme for the following meetings:

The first meeting will be held in Tegucigalpa at the level of the Ministers for Foreign Relations and its objective will be the exchange of opinions regarding the international political situation and relationships between the two sister countries.

The second meeting, to be held in Managua, will be at the level of the Ministers for Defence and Chiefs of Staff and its purpose will be the preparation of plans for combined action in order to eliminate the risks of further incidents in the frontier zone.

They both expressed their intention to warn potential hijackers of aircraft or ships that they will not find — either in Honduras or in Nicaragua — any type of protection or asylum.

The Co-ordinator of the National Reconstruction Governing Junta of Nicaragua, Commander in the Revolution Daniel Ortega Saavedra, cordially invited the President of the Republic of Honduras, General Policarpo Paz Garcia, for a high level delegation to visit Nicaragua on the occasion of the

Celebration on 19 July, the second anniversary of the triumph of the People's Sandinista Revolution.

They both expressed their deep satisfaction at the successful conversations which had been held and expressed their wishes for the happiness of the sister nations of Nicaragua and Honduras.

El Guasaule, Republic of Nicaragua, 13 May 1981.

Annex 3

PLAN OF THE GOVERNMENT OF HONDURAS TO INTERNATIONALIZE PEACE IN CENTRAL AMERICA; ADDRESS BY THE MINISTER OF FOREIGN RELATIONS OF HONDURAS TO THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES (OAS), 23 MARCH 1982 (EXCERPTS)

(Translation)

. . . Honduras is aware and firmly believes that Central American peace can be achieved, but only if we combine honest will with the sincere intention of the interested parties to solve situations of conflict by peaceful means in order to achieve responsible, serious and permanent understandings for peace, justice and liberty.

Being fully aware of these purposes and responsibilities, the Government of Honduras proposes, from this Forum of the Americas:

First. To lay down immediately the bases in order to achieve general disarmament in the region which would involve not only the cessation of the armaments race which has brought so much tension and disequilibrium to Central American and Continental relationships but a true reduction in weapons and military forces in order to arrive, in the countries where they have armed forces, at the levels strictly necessary for the defence of sovereignty and territorial integrity and for the maintenance of public order, subject to the requirements and criteria accepted universally and recognized in any democratic society governed by law. These bases must also contain agreements with regard to the type of weapons the limitation or prohibition of which would be a part of this general disarmament plan.

Second. To agree likewise on the objective and reasonable reduction of foreign, military and other advisers and any other elements which could generate doubts and disturbances or denature the true identity of each nation.

Third. To study and agree on the mechanisms appropriate so that, by international vigilance and supervision, to which Honduras has decided to submit itself, control may be exercised on the performance of commitments contracted by the governments in the Central American area. That supervision and vigilance would be extended to the countries where there are conflicts and sensitive circumstances which could affect the peace of the region such as, for example, ports, airports, frontier zones and strategic sectors. My country has the highest and most sincere willingness to open its territory without reservation to any type of international supervision and monitoring which might be agreed upon for the best basic purpose of finding and strengthening peace.

Fourth. To discuss and agree on the most adequate mechanisms and procedures to stop arms traffic in the Region.

Fifth. To maintain absolute respect for the defined, demarcated frontiers and traditional lines and jurisdiction of the States of the Region in order not to affect peace with new disputes which could arise in the territorial and marine fields.

Sixth. To define the parameters for a permanent dialogue of a multilateral nature which will also permit, on the basis of this initiative and in internal matters, progress towards political understandings leading to the securing of a democratic and pluralistic system ensuring respect of public freedom and the right of peoples to manifest their will freely.

We maintain that armaments constitute a serious scourge threatening the destiny of nations and the very survival of the human race. We therefore believe that the excessive sums invested in weaponry should be used to combat misery and poverty, to promote complete well-being of peoples, to provide technical and scientific assistance, to overcome backward conditions of the countries in course of development and aid in the structuring of a new international economic order in order to reduce tensions which heighten the dramatic events of our times . . .

Annex 4

NOTE OF THE MINISTER OF FOREIGN RELATIONS OF HONDURAS TO THE MINISTER OF FOREIGN RELATIONS OF NICARAGUA, 23 APRIL 1982

(Translation)

OFFICE OF THE MINISTER FOR FOREIGN RELATIONS OF THE REPUBLIC OF HONDURAS

Tegucigalpa, D.C., 23 April 1982.

To Dr. Miguel d'Escoto B.,
Minister for Foreign Relations,
Managua, Nicaragua.

Dear Minister,

I write to Your Excellency to thank you for your kindness in replying to the invitation which I extended to you by a note of the 6th instant for the purpose of holding a meeting between us within the context of the proposal for internationalizing peace in Central America which I submitted, in the name of the Government of Honduras, to the Permanent Council of the OAS on 23 March last.

I am of the view that the visit by Your Excellency, which was made on Wednesday last week to Tegucigalpa, in view of the cordiality and frankness with which we discussed various points in the Central American problem, constitutes an important step in our common desire to ensure that the peace and tranquillity to which all peoples are entitled may prevail in the Isthmus.

During your welcome stay in this city, Your Excellency handed me a proposal consisting of 7 points which, in view of the importance of clarifying our respective positions, call for certain observations on the part of my Government.

In fact, the first point in the proposal by Your Excellency talks of the "immediate holding of a meeting of the Chiefs of Staff of Honduras and Nicaragua, adopting the Spirit of the Guasaule Agreements". In that connection, as we agreed, I passed on, to the President of the Republic, our discussion regarding the projected military meeting so that it could be carried into effect. At the same time I would remind Your Excellency that it was within the context of the said Honduran initiative that we met in Tegucigalpa and subsequently in Managua and we shall endeavour to meet with other Ministers for Foreign Affairs in the area.

I understand, as was very clearly explained by Your Excellency, that your proposal is of a bilateral nature and is aimed at improving relations between our two countries, while the Honduran initiative is wider in scope, of a regional nature and with perhaps more ambitious objectives. Despite this, my Government considers that the regional approach should prevail since a major part of the problems confronted by the Central American countries go beyond the possibility of a bilateral solution. Sufficient to recall that the most serious of these is the violence prevailing in some of them since it generates other problems, equally painful, such as that of refugees. If violence were not to occur in one of its forms, there would be no refugees. Furthermore, something which evidently stimulates the outbreaks of violence is the traffic in weapons existing in the area. Here it is necessary to determine where they come from and whom they are intended for, in order to be capable of putting an end to this. These few examples indicate to us that it is essential to seek regional solutions because, I repeat, the problems are regional.

It is encouraging to find, however, that our two proposals are not necessarily mutually exclusive. There are certain points in the proposal by Your Excellency which, perhaps in an indirect manner, are included in the Honduran initiative. For example, Your Excellency proposes, as a second point, that from the meeting indicated the Governments of Nicaragua and Honduras should subscribe non-aggression agreements. Honduras considers that agreements of this nature are not necessary in order to maintain peace, when there is the legal duty and political will to do so; both Nicaragua and Honduras are members of the United Nations Organization and the Organization of American States and the Charters of both these organizations specifically prohibit the use of threats or force to solve disputes which may arise between member States. Honduras, by tradition and by conviction, scrupulously respects its international obligations and has repeatedly stated that its territory will never be used for aggression or for the destabilization of the government of other countries. This political will for peace requires, as is just and logical, a corresponding will for observance on the part of the other countries. History also demonstrates that legal instruments of the nature in question have never been an obstacle to the clearance of obscurities when the desires for peace are sincere. But the suggested non-aggression agreements present other difficulties of a technical and practical nature. It would be necessary to go into the discussed problem of the definition of aggression and specifically into aspects which are not considered in the definitions given by the United Nations nor by the Inter-American System. I refer to those actions which, not reaching a warlike confrontation between armies, in a cunning, underground manner introduce subversion and diminish the institutional structure of another State. Unfortunately, this is what is taking place in Central America and what requires an urgent solution. A good start to achieve this could be found in the first point of the Honduran proposal which reads:

> "To lay down immediately the bases in order to achieve general disarmament in the region which would involve not only the cessation of the armaments race which has brought so much tension and disequilibrium to Central American and Continental relationships but a true reduction in weapons and military forces in order to arrive, in the countries where they have armed forces, at the levels strictly necessary for the defence of sovereignty and territorial integrity and for the maintenance of public order, subject to the requirements and criteria accepted universally and recognized in any democratic society governed by law. These bases must also contain agreements with regard to the type of weapons the limitation or prohibition of which would be a part of this general disarmament plan."

As Your Excellency is aware, the need for universal disarmament has been discussed for decades in various international forums. The arms race which the world has undertaken since the end of the second world war not only constitutes a constant threat to the survival of humanity but deprives entire people of the resources which are necessary for their subsistence and development. If this is so for other richer and more advanced peoples, what could be said of our people, overwhelmed by poverty, sickness and ignorance? General disarmament in Central America would be the resounding proof in demonstrating that our desires for peace are real and true and not a simple lyrical manifestation of good intentions.

We can use the same reasoning with regard to the third point in the proposal by Your Excellency when you suggest

> "the establishment of a system of combined controls at our common frontiers for the purposes of preventing the activity of armed elements who endanger the relationships between both countries".

The suggestion is undoubtedly worthwhile but I believe that it falls short of its objectives and could well be extended, as is mentioned in the third point of the Honduran proposal to the intent that the appropriate mechanisms should be studied and agreed so that, by international supervision and vigilance, control should be exercised over the performance of the commitment contracted by the Governments of the Central American Area. This supervision would not be limited to frontier zones but would also include ports, airports and strategic sectors. In that connection I repeat, to Your Excellency, what I stated before the Permanent Council of the OAS:

> "My country has the highest and most sincere willingness to open its territory, without reservation to any type of international supervision and monitoring which might be agreed upon for the basic purpose of finding and strengthening peace."

The fourth point in the proposal from Your Excellency states:

> "Dismantling of the camps of the counter-revolutionary Somoza Bands on Honduran territory and withdrawal from the frontier zone of any type of concentration of the Somoza elements."

With regard to that point I would begin by stating, to Your Excellency, that there are no camps of Somoza Revolutionaries in Honduras. The truth of this assertion is proved by our willingness to accept a system of international monitoring and supervision on our territory. However, as an earnest of the spirit of understanding animating my Government I am able to inform Your Excellency that I have already initiated formalities with the Government of Mexico aimed at an agreement on its part to receive or to aid other countries to do so, those refugees who potentially, in view of the geographical proximity, offer the greatest risk to Nicaragua. Your Excellency will recall that, in that connection, I even asked for your valued help with that Government.

The fifth point in the Nicaraguan proposal states:

> "Not to install any foreign naval base in any point of the Gulf of Fonseca without the express agreement of the three countries whose sovereignties participate in the said Gulf."

Once again I would state that Honduras does not and never has had the intention to permit the installation of foreign naval bases in the Gulf of Fonseca nor on any other part of its territory. In that connection I have to understand that the prohibition is extended to all the neighbouring States since in the past it was not specifically Honduras which endeavoured to grant a concession of that nature. Furthermore, I consider that this point is also entailed in the Honduran proposal since not only should one talk of the non-installation of foreign bases but also the dismantling of the military bases operated by foreigners which already exist in some countries and the training schools and camps where individuals of various nationalities are prepared for the various techniques of subversion and guerrilla warfare.

With regard to the sixth point in the proposal by Your Excellency which relates to the conclusion of bilateral meetings of a political, economic, diplomatic, military and security nature, and also cultural, social, sports and other meetings with a given frequency in order to "strengthen the relationships between the two countries, analyse the problems and promote peace", my Government indicates its complete agreement, but — being aware of the regional aspect — they should be entered into not only between Honduras and Nicaragua, but also with the participation of other countries in the area.

The seventh and final point in the Nicaraguan proposals suggests

> "proceeding in an organized manner and with the co-operation of the appropriate International Organizations to the eventual repatriation of those indigenous Indians who voluntarily wish to return to Nicaragua".

As I have stated previously, the Government of Honduras, based on purely humanitarian reasons, has received thousands of refugees in its territory. The majority of these are innocent persons fleeing from the violence affecting Central America and seeking the freedom of Honduras guaranteed by a government which has been freely elected and which respects the Law. Honduras, as is logical, would be pleased to see the return of the refugees to their country of origin and in that connection agrees to entrust to the representatives of the High Commission of the United Nations for Refugees (UNHCR), who are taking a census of the Indians who have come to Honduras, to determine those who wish to return and, on its entire responsibility, effect their repatriation. Of course it must be clearly established that the Government of Honduras is not expelling them to Nicaragua and that it declines any responsibility for the fate which they may encounter on their return.

The points contained in the Honduran proposal include one relating to the obligation to respect the frontiers existing between the countries of the Isthmus and also the traditional and jurisdictional lines of the States in the region in order not to affect peace by new disputes which may arise from the land or marine aspect. I consider that this point could be implemented easily and immediately, provided that the sincere wish for peace, referred to above, exists. In any event, the Honduran proposal also considers the advisability of

> "to define the parameters for a permanent dialogue of a multilateral nature which will also permit, on the basis of this initiative and in internal matters, progress towards political understandings leading to the securing of a democratic and pluralistic system ensuring respect of public freedom and the right of peoples to manifest their will freely".

The extent of this point, in my view, makes it possible by means of permanent dialogue, with the friendliness which should exist between Central American countries, to seek adequate solutions to the problems faced by the region. The valuable visit which Your Excellency has just made to my country and which I consider to be very positive, is a clear example of what can be achieved by dialogue, and the results will be even more beneficial if we succeed in including other Ministers for Foreign Affairs in future conversations.

Whilst expressing my confidence that Your Excellency will accept the above comments in the constructive spirit in which they have been made, I take the opportunity to express my sincere regards.

Edgardo PAZ BARNICA,
Minister for Foreign Relations.

Annex 5

NOTE OF THE MINISTER OF FOREIGN RELATIONS OF HONDURAS TO THE MINISTER OF FOREIGN RELATIONS OF NICARAGUA, 14 MAY 1982

(Translation)

SECRETARIAT OF FOREIGN RELATIONS OF THE REPUBLIC OF HONDURAS

Tegucigalpa, D.C., 14 May 1982

Bulletin No. 289-DSM

His Excellency Dr. Miguel d'Escoto,
Minister of Foreign Affairs,
Managua, Nicaragua.

Mr. Minister:

I am writing to Your Excellency in order to refer to the conversations which we had this past Wednesday 21 April, when you came to Tegucigalpa in response to the invitation which I extended to you on the basis of the Peace Initiative presented by the Government of Honduras on 23 March of the current year.

As your Excellency will recall, on that occasion it was agreed that a meeting would be held by the military chiefs of our two countries, for purposes of analysing situations and problems of mutual interest, in the context of the above-cited Initiative.

As I brought to your attention, I informed the President of the Republic of the planned meeting of the military chiefs so that in accordance with the corresponding constitutional framework, he could give the instructions necessary to permit this meeting to occur.

In consideration of the foregoing, I permit myself to bring to the attention of Your Excellency that the Constitutional President of Honduras, Dr. Roberto Suazo Cordova, has taken the necessary measures so that next Thursday 20 May, the Military Chiefs of Honduras will meet with the Military Chiefs of Nicaragua, beginning at 9.00 a.m. at the "Fraternidad" Customs House, in Honduran territory.

For the purpose of co-ordinating in the best way the above-mentioned meeting and for related purposes, including the participation in such meeting of the corresponding Military Chiefs of the Nicaraguan Army, I permit myself to inform you that the following officials will participate in representation of the Armed Forces of Honduras:

Infantry Colonel D.E.M.
Jose Abenego Bueso Rosa
Chief of Staff of the Armed Forces

Infantry Colonel D.E.M.
Daniel Bali Castillo
General Commandant of the Public Security Forces

Infantry Colonel D.E.M.
Rubeo Humberto Montoya Ramirez
General Commandant of the Navy

Infantry Colonel D.E.M.
Rigoberto Regalado Hernandez
Inspector General of the Armed Forces

Infantry Colonel D.E.M.
José Wilfredo Sanchez Valladares
Commandant of the 6th Infantry Battalion

Infantry Colonel D.E.M.
Danilo Ferrera Suazo
Commandant of the 11th Infantry Battalion.

I wish to express to Your Excellency that in inviting the illustrious Government of Nicaragua to the meeting of military chiefs to be held on the 20th of the current month, my Government is motivated by the goal of finding appropriate solutions that will permit the strengthening of a climate of peaceful coexistence, through the mechanisms of the Peace Initiative, of a regional and global character, which constitutes one of the fundamental aspects of the international policies of the Government of Honduras. I take this opportunity to reiterate to your Excellency my highest and most distinguished consideration.

Edgardo PAZ BARNICA.
Minister of Foreign Relations.

Annex 6

Final Act of the Meeting of Ministers for Foreign Relations of Countries Interested in the Furthering of Democracy in Central America and the Caribbean, Points I, II and III, 4 October 1982

(Translation)

The Representatives of the Governments of the Republics of Belize, Colombia, El Salvador, the United States of America, Honduras, Jamaica and Costa Rica, and the Observer representing the Dominican Republic . . .

Declare:

. . .

I. Its faith and adhesion to the principles of representative, pluralistic and participative democracy, which is understood to constitute a way of living, of thinking and acting, within whose ambit fit different social and economic systems and structures, marked by the common denominator which is respect for life, personal security and liberty of thought, press and religion, such as the right to work and to fit compensation, fair living conditions, the free exercise of the vote and other human, civil, political, economic, social and cultural rights.

II. Its concern for the grave deterioration of the conditions of the current economic order and international financial system, which leads to a process of destabilization, anguish and concern, which particularly affects the countries having democratic systems of government. In this regard, it calls upon the attention of the industrialized democratic countries, so that they may increase their co-operation with the democratic countries of this area, with audacious and efficient initiatives, which will contribute to the efforts of recovery and economic and social development which the interested countries in the region are themselves carrying out. As part of this collaboration, special urgency is demanded for the initiative of the President of the United States of America in relation to the Caribbean Basin, which deserves to be stimulated and to become a reality in all its aspects in the briefest possible time. In addition, the signatories recognize the efforts for co-operation in economic assistance undertaken by the governments making up the Nassau Group: Canada, Colombia, United States, Mexico and Venezuela.

Its decision to support the existing efforts of subregional economic integration, including the common market of Central America and the Caribbean Community, and stress the urgency of renovating and perfecting the processes of integration which are encountering critical situations, with the purpose of giving them an appropriate political, economic, juridical and institutional framework.

III. Its conviction that to promote regional peace and stability it is necessary to stimulate, in the internal order, political understandings leading to the installation of democratic, representative, pluralistic and participative systems; the establishment of multilateral and permanent dialogue mechanisms. The absolute respect for the delimited and demarked borders in conformity with existing treaties, whose observance is the ideal way to avoid disputes and border incidents, respecting, where relevant, the traditional lines of jurisdiction; the respect for independence and the territorial integrity of the States, the rejection of threats or the use of force to resolve conflicts, the cessation of the arms race and the elimination, on the basis of full and effective reciprocity, of factors of an external origin which make it difficult to establish a stable and durable peace. It is essential for the achievement of these goals that each country, inside and outside the region, should put into practice the following actions:

(a) create and maintain truly democratic governmental institutions, based on the popular will expressed in free and regular elections, founded on the principle that the government is responsible to the governed;

(b) respect human rights, especially the right to life and to personal integrity, and the fundamental freedoms, including, *inter alia*, freedom of expression, information, assembly and religion, as well as the right to organize political parties, unions and other groups and associations;

(c) promote national reconciliation in those cases where profound divisions have been produced within the society through the broadening of opportunities for participation within the framework of democratic processes and institutions;

(d) respect the principle of non-intervention in the internal affairs of the States; and the right of the people to self-determination;

(e) prevent the use of their own territories for purposes of support, supply, training or direction of terrorist or subversive elements in other States, putting an end to trafficking in arms and munitions and abstaining from all direct or indirect aid to terrorist or subversive activities or activities of another nature leading to the violent overthrow of the government of another State;

(f) to limit armaments and the size of military and security forces to levels which are strictly necessary for the maintenance of public order and national defence;

(g) in conformity with the reciprocal and fully verifiable conditions, to include the international observance and supervision of all entry ports and border areas and other strategic areas;

(h) on the basis of full and effective reciprocity, to withdraw from the Central American area all foreign military and security advisors and troops, as well as to prohibit the import of heavy arms of an obvious offensive capacity, through procedures guaranteeing the necessary verification.

The foregoing actions represent an integral framework in each State which is essential to promote regional peace and stability.

The signatory States call upon all peoples and governments of the region to welcome and put into practice these principles and conditions as the basis for the perfecting of democracy and the construction of a durable peace.

Register with satisfaction the efforts which are being made in this direction; and consider that the full accomplishment of these objectives will be able to be achieved more fully through the reestablishment of the State of Law, and the organization of electoral processes guaranteeing total popular participation without any form of discrimination . . .

Annex 7

Note from the Permanent Mission of Honduras Transcribing the Text of the Invitation that the Minister of Foreign Affairs of Honduras Sent to the Minister of Foreign Affairs of Nicaragua to Visit the Border Zone between the Two Countries, 22 February 1983

OEA/Ser.G
CP/INF.1946/83
22 February 1983
Original: Spanish

MISSION OF THE REPUBLIC OF HONDURAS TO THE ORGANIZATION OF AMERICAN STATES

No. 07/83/MPH/OEA/CP

22 February 1983.

Excellency:

I have the honor to address Your Excellency to make known to you the invitation extended by His Excellency Dr. Edgardo Paz Barnica, Minister of Foreign Affairs of Honduras, to His Excellency Miguel d'Escoto Brockmann, Minister of Foreign Affairs of Nicaragua, which reads as follows:

> "Tegucigalpa, D.C., 18 February 1983. His Excellency Miguel d'Escoto Brockmann, Minister of Foreign Affairs, Managua, Nicaragua 052. I am honored to extend to Your Excellency a cordial invitation to visit, along with me, the border zone between our two countries, so that you may verify how unfounded is the tendentious campaign that the distinguished Government of Nicaragua has carried on, at an international level, tending to put in doubt the absolute neutrality of Honduras in the internal conflict your country is experiencing. Your Excellency may indicate the specific points at which encampments of Nicaraguan counterrevolutionaries supposedly exist, in the certainty that you will thus be convinced that the constitutional and democratic Government of Honduras fully respects the principle of non-intervention in affairs of other States and the right of the peoples to self-determination. In the hope that Your Excellency will deign to accept this invitation, made with the sincere spirit of reconciliation that characterizes my Government in its struggle in behalf of the peace of the region, I would greatly appreciate it if you would indicate a date and meeting place for making the pertinent arrangements. Accept, Excellency, the renewed assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs of Honduras."

I request that this document be distributed to the members of the Permanent Council.

Accept, Excellency, the renewed assurances of my highest consideration.

(Signed) Roberto MARTINEZ ORDOÑEZ,
Ambassador.

His Excellency,
Dr. Raul A. Quijano,
Chairman of the Permanent Council,
Organization of American States,
Washington, D.C.

Annex 8

REPORT OF THE MINISTER FOR FOREIGN RELATIONS TO THE NATIONAL CONGRESS OF HONDURAS DATED 15 JUNE 1983 (EXCERPT)

(Translation)

. . . .

2. *The Situation of Nicaragua in the Central American Context*

(A) The situation in Nicaragua and its repercussion on Honduras and the region

As will be recalled, the Peace Plan proposed by Honduras within the OAS was put forward at a time when Nicaragua was threatening to submit a denunciation against Honduras at the Security Council of the United Nations. The immediate effect of our proposal was to make any Nicaraguan accusation worthless and to confront the Managua Government with an initiative of concrete negotiation including aspects of security which Nicaragua has been violating.

In the month after the submission of the Peace Plan, I had a meeting in Tegucigalpa with the Minister for Foreign Affairs of Nicaragua, Mr. Miguel d'Escoto Brockmann, to whom I explained in detail the intention and scope of our proposal. Although the Nicaraguan Minister did not reject the plan completely, he replied by submitting a list of proposals aimed at the establishment of exclusively bilateral negotiations between Honduras and Nicaragua. These proposals completely disregarded the multilateral aspects of the Central American crisis and had the ultimate object of resolving the internal problems of Nicaragua with which it was already faced at that time, leaving in existence the interventionist practices of Managua and military imbalance in the region.

A few days after the visit I sent Minister d'Escoto an extensive note[1] in which, without refusing discussion of the bilateral problems which could exist between the two countries, I reiterated our invariable position with regard to the priority importance of a solution to the questions within a regional context.

Nicaragua always refused to tackle the problems from a regional perspective and accused Honduras of refusing bilateral dialogue. That assertion lacked meaning since last year I had conversations with the Nicaraguan Foreign Minister in Tegucigalpa, Santo Domingo, New York and Washington. I also had various conversations in Washington with the Under-Minister for Foreign Relations, Mr Victor Hugo Tinoco. Finally, when in November last year relationships between the two countries had clearly deteriorated and the trend had grown dangerously, I travelled on a mission of peace to the capital of Nicaragua on the initiative of our Government. At that time, in addition to lengthy conversations with the highest authorities for foreign policy of Nicaragua. I also had an ample exchange of opinions with the Co-ordinator of the Reconstruction Junta, Commander Daniel Ortega Saavedra, who in essence told me that there were no true and insuperable problems between Honduras and Nicaragua and that his concern was to achieve an arrangement with the United States of America by means of bilateral discussion.

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[1] Editor's note: the note referred to is attached hereto as Annex 4.

Honduras has also been open for bilateral dialogue at another level. In May 1982 the Chiefs of Staff of the armies of both countries met at the Customs Station of La Fraternidad accompanied by the General Commanders of the various branches of the armed forces and the heads of the frontier military zones. Agreements in principle were reached particularly with regard to fluidity of communications between them in order to avoid and solve promptly any incidents which might arise. It was also agreed that the heads of the various military branches should hold separate meetings in order to prepare for a meeting by the heads of the armed forces of both countries.

The first meeting was held between the heads of the naval forces and this took place in July in the Port of Corinto. On that occasion the head of the naval force of Honduras submitted, to the Nicaraguan Delegation, an important plan to avoid maritime incidents which included the creation of demilitarized zones, tolerance zones, signalling of the marine frontiers by buoys, extension of the line dividing the waters in the Gulf of Fonseca and observance of Parallel 15 in the Atlantic Ocean. Nicaragua promised to study the plan and to give a reply at the following meeting which never took place owing to lack of decision and reply from that country.

It should also be pointed out that, during the first months of this year, I approached the Minister for Foreign Affairs of Nicaragua, Mr. Miguel d'Escoto, suggesting that we should jointly travel along the frontier zone as an appropriate step to reduce the prevailing tensions. This invitation was rejected by the Nicaraguan Government.

Considering that Nicaragua would not negotiate with Honduras of its own free will, the Foreign Office began to work on certain mechanisms of a regional nature which could back the Honduran proposal. In that connection, in May last, the President of the Republic visited Costa Rica in order to be present when President Monge took office. In attendance were the Presidents of Costa Rica, Venezuela, Colombia, Honduras and Panama, the Prime Minister of Belize and a member from the Governing Junta of Nicaragua, and Honduras put forward its ideas regarding the Central American situation and arranged for the Joint Communiqué issued by the Heads of State and Heads of Government, to recognize the special value of the Honduran peace initiative. The Communiqué adopted the principles postulated in our Peace Plan.

The Foreign Office also implemented a policy of approach to the new Government of Costa Rica which is the other State having frontiers with Nicaragua and jointly promoted a meeting of Foreign Ministers of nine countries in October 1982 at which our Peace Plan was discussed. Mexico did not agree to attend and Venezuela excused itself on the second day from the commencement of the meeting in a message from President Herrera Campins who said, nevertheless, that Venezuela would adopt the proposals of the conclave designated "Foro Pro-Paz y Democracia". Guatemala and Nicaragua were not invited to that first meeting; however, when it ended it was agreed that they should be invited to participate in the next meeting within the principles of peace and democracy which had been agreed there. Guatemala agreed to attend; nevertheless, Nicaragua refused even to receive a visit from the Costa Rican Foreign Minister Fernando Volio Jimenez who invited Nicaragua to join the group. Nicaragua argued that it would not participate because the

United States of America were included in the group. This attitude conflicts with what was stated to me by Commander Ortega that his principal interest was that of achieving an arrangement with that country. Sufficient to say that the final report of San José incorporated, in its text, the whole of the points of our peace proposal and complemented that same.

As a result of the refusal by Nicaragua, the Foreign Office began to work on other options during the months of October and November. Those options were: a meeting of the five Central American Foreign Ministers or a meeting of them with the participation of five peripheral States, namely: Mexico, Panama, Colombia, Venezuela and the Dominican Republic.

During the United Nations and OAS meetings I myself, as Minister for Foreign Relations, devoted myself to sounding out, with the Central American countries and the peripheral countries, the two options described above, in particular with Mexico, Colombia and Venezuela. In general, the atmosphere was positive, particularly on the part of the Central Americans.

During the visit of President Ronald Reagan to various countries of the region in the month of December last, the Government of Honduras submitted to the North American representative a document containing the most important aspects of our view of the regional problems and the means which according to Honduras should be used to achieve a negotiated solution. It contained the proposal on the part of Honduras for a meeting of Central American Foreign Ministers or a meeting of these Ministers with other peripheral countries, without the participation of the United States of America.

Nicaragua which, at the beginning, here in Tegucigalpa in April 1982 had accepted a regional meeting, took a step backwards and began to question this mechanism as well, arguing that four countries would be against one country at the negotiating table.

(B) The negotiations within the Contadora Group

The Foreign Ministers of Mexico, Colombia, Panama and Venezuela met on the Island of Contadora at the beginning of January 1983 in order to analyse the economic problems which they were facing and to investigate the Central American crisis. On that occasion a discussion took place as to whether to support or not, in an express manner, the initiative of Mexico and Venezuela for meetings at the highest possible level between Honduras and Venezuela. Some countries maintained that if that initiative were supported, the same should apply to the Foro Pro-Paz y Democracia which had a regional aspect. Finally, the four countries limited themselves to issuing a declaration supporting the dialogue and negotiation as a form of reducing tensions and preventing conflicts in Central America.

The Honduran Government had been following the Contadora Island meeting closely and during the same month of January instructed the Honduras Foreign Minister to travel to Panama, Venezuela and Colombia in order to analyse aspects relating to bilateral co-operation but essentially regional matters, taking — as a specific proposal from Honduras — the urgency for these three countries together with Mexico and the Dominican Republic to promote a meeting of Foreign Ministers of Central America. This suggestion was made not only at the level of the Ministers for Foreign Relations but also the Presidents of those countries. The result was very favourable towards the adoption of a mechanism for negotiations as proposed by Honduras.

Furthermore, contacts were made with the Dominican Republic through our Embassy in order to request that country to act as host for the meeting.

The Dominican Foreign Office replied in the affirmative, repeating the invitation which to that intent I had already made to the Foreign Minister of that country during the 12th Ordinary General Meeting of the OAS in November. It was only with Mexico that no direct contact was made, although the Colombian Foreign Office had undertaken to consult Mexico and Nicaragua.

In view of the favourable reply from the majority of countries, Honduras instituted, in February, two meetings at San José de Costa Rica of the Foreign Ministers of El Salvador, Costa Rica and Honduras in order to discuss the matter and prepare for that eventuality.

The Foreign Ministers of Mexico, Panama, Colombia and Venezuela met again in Panama in the month of March. They did not invite the Dominican Republic to participate, as was the desire of that country and of El Salvador, Costa Rica and Honduras. The President of Colombia, Belisario Betancur, made a visit to Caracas, Panama City and Mexico City and agreed with the Presidents of those countries to make progress in the promotion of a meeting of nine countries including the five Central American countries and the four countries of the so-called Contadora Group. It was in these circumstances that the Ministers for Foreign Affairs travelled to the five Central American capitals and were all subsequently invited to attend a meeting in Panama as from 19 April last. The five Central American States agreed to participate.

The first meeting was held in fact in Panama, and almost failed due to insufficient preparation and the diametrically opposed positions which supported bilateralism, on the part of Nicaragua, and the regional and global aspect, maintained by Guatemala, El Salvador, Costa Rica and Honduras. It was an extremely tense meeting with confrontations and opposite positions. The sole success was that of a separate meeting between each Central American Foreign Minister and the Contadora Group of four, identifying the concerns of each country and agreeing on the need for a fresh better-planned meeting.

For the second meeting, Honduras previously promoted the realization of a meeting with Guatemala, El Salvador and Costa Rica which was coordinated by the Foreign Minister of El Salvador in the absence of the other three Foreign Ministers. This meeting took place on 19 and 20 May 1983 and fully discussed the procedures to be adopted at the next meeting in Panama, the matters of interest to the four States and the regional and global aspect which they would all support. It was also decided that, two days before the Panama meeting, technical advisers of the four countries would hold a fresh meeting to prepare the combined action of the four States in a better manner.

The achievements of the second meeting in Panama were very important to the cause of Honduras and the other three allied countries. Firm unity of action was maintained between the four. In practice, Nicaragua was compelled to abandon its stubbornness and bilateralism. There were 16 hours of intensive conversations between all the nine Foreign Ministers and no separate meeting with Nicaragua.

Within the framework of the multilateral conversations and with the presence of the nine Foreign Ministers, there were discussions on bilateral matters between Honduras and Nicaragua, Costa Rica and Nicaragua, El Salvador and Nicaragua and to a lesser degree between Guatemala and Nicaragua. I believe that the greatest success was the approval of the matters subject to negotiation because they all correspond to our Peace Plan and the final minutes of the Foro Pro-Paz y Democracia. The attitude is predominantly multilateral and, within that context, certain bilateral questions arise among the five Central American States. A technical working group was also created in order to agree, as from

16 June 1983 in Panama, on the procedural mechanisms to be brought into practice at the next meeting of the nine Foreign Ministers.

The agenda approved for the negotiations was as follows:

1. Conceptual framework:
   - *(a)* Principles and rules of International Law
   - *(b)* Conditions for peaceful co-existence
   - *(c)* Strengthening of democratic political institutions.
2. Political and security problems:
   - *(a)* The arms race
   - *(b)* Foreign advisers
   - *(c)* Traffic in weapons
   - *(d)* Political actions and de-stabilization actions
   - *(e)* Human rights and related matters
   - *(f)* Tensions and incidents between frontier and non-frontier States.
3. Economic and social objectives:
   - *(a)* Sub-regional co-operation and interchange
   - *(b)* Latin American regional support
   - *(c)* International co-operation for development
   - *(d)* Refugees.
4. Implementation and control of agreements adopted.

. . . .

Annex 9

DECLARATION OF CONTADORA ISLAND BY THE MINISTERS OF FOREIGN RELATIONS OF COLOMBIA, MEXICO, PANAMA AND VENEZUELA, 9 JANUARY 1983

(Translation)

In response to the invitation extended by the Minister of Foreign Affairs of Panama, Lic. Juan José Amado III, the Ministers of Foreign Affairs of Colombia, Dr. Rodrigo Lloreda Caicedo, Mexico, Lic. Bernardo Sepúlveda Amor, and Venezuela, Dr. José Alberto Zambrano Velasco, met on January 8 and 9, 1983, on Contadora Island.

The Foreign Ministers met with His Excellency, the President of the Republic, Lic. Ricardo de la Espriella T., and with His Excellency, the Vice-President of the Republic, Dr. Jorge Illueca.

At this cordial meeting, the strong feelings of brotherhood, solidarity and reciprocal understanding which the Governments and peoples of Colombia, Mexico, Panama and Venezuela have traditionally shared were reaffirmed.

The Foreign Ministers dealt with various topics of regional interest, and agreed on the need to intensify the dialogue at the Latin American level as an effective means to deal with the political, economic and social problems which jeopardize the peace, democracy, stability and development of the countries of the hemisphere.

They studied the complex situation existing in Central America, as well as the political processes which are under way in the area, their interrelation and their effects on stability and peace in the region. In expressing their deep concern with the foreign interference — direct or indirect — in the conflicts of Central America, and in pointing out that it is highly undesirable to place those conflicts in the context of the East-West confrontation, they agreed on the need for removing the external factors that aggravate those conflicts.

They urgently called upon all the countries of the Central American area to reduce tensions and to establish the basis for a lasting climate of friendly relations and mutual respect among the States, through dialogue and negotiation.

Upon reaffirming the obligation of the States not to resort to threats or to the use of force in their international relations, they urged all of them to refrain from acts which could aggravate the situation, creating the danger of a generalized conflict that would spread throughout the region.

Likewise, there was an account of the various peace initiatives and their effects. In this regard, respecting the principles of non-intervention and self-determination of nations, the Foreign Ministers analysed possible new actions, and pointed out the desirability of including in those efforts the valuable contribution and the necessary support of other countries of the Latin American community.

They reaffirmed their decision to continue contributing to the economic strengthening of the Central American and Caribbean countries through initiatives such as the Energy Co-operation Program sponsored by Mexico and Venezuela and the Financial Co-operation Plan advanced by Colombia. They felt that these and other economic co-operation measures serve the purposes of political stability and social peace.

With regard to the upcoming meeting of the Bureau for the Co-ordination of the Movement of Non-aligned Countries, to be held in Managua, Nicaragua, from January 10 through 14 of this year, the Foreign Ministers emphasized the importance of the movement to the developing nations.

Best wishes were expressed for the successful outcome of that meeting, in the conviction that the final conclusions will constitute factors conducive to balanced and constructive solutions to the regional problems.

They agreed on the importance of expanding participation of the Latin American nations in the Movement of Non-aligned Countries, either as members or as observers, because this would assure better systems for consultation, dialogue and negotiation, and would strengthen the bases of non-alignment and political pluralism.

Upon examining international economic matters, the Foreign Ministers noted with concern the downturns in the world economy. They pointed out the negative effects this situation has had in Latin America in terms of financing, trade, investment and employment, and they stressed the need to reorganize an international economic system which, in its imbalanced condition, is causing the developing countries serious maladjustments.

The Foreign Ministers examined the decline in world trade, the prevalence of protectionism in the industrialized countries, the terms imposed for external credit, and the insufficiency of such credit. They pointed out that the promotion of development financing requires the foreign exchange obtained from foreign trade and from other financial sources supplementing it, in addition to domestic savings. These factors which are essential to the Latin American economies, will make it possible, to the degree in which they materialize, to consolidate productive investment and to ensure the creation of jobs.

The Foreign Ministers emphasized the importance of the periodic consultations at the ministerial level to deal with economic topics of interest in the Latin American sphere. In view of the obvious usefulness of co-ordination in SELA, the Foreign Ministers noted the importance of the Ministerial Meeting of Latin American and Caribbean Countries, to be held in February in Cartagena, and the Ministerial Meeting of the Group of 77, which will be held in Buenos Aires next March.

To these ends, they reaffirmed their desire to make an effective contribution so that those meetings may accomplish their purpose, which is to co-ordinate and establish the joint negotiation position of the developing countries at the VI UNCTAD, to be held in Belgrade. This forum should become the driving force of a series of global negotiations which, in the context of the United Nations, are to set the standards for international co-operation of development.

The Foreign Ministers agreed on the importance of faithfully complying with the Panama Canal Treaties, and they observed with approval the progress made from the jurisdictional standpoint in the implementation of those treaties. Nevertheless, they expressed concern over the unfavourable effects of the use of discriminatory legal instruments in other aspects of the Torrijos-Carter treaties which are in the process of implementation.

On the occasion of the bicentennial year of the birth of the Liberator Simon Bolivar, the Foreign Ministers stressed the significance of that notable event and the opportunity it provided to strengthen friendship and foster the co-operation among all the Latin American nations.

The Ministers of Foreign Affairs of Colombia, Mexico and Venezuela thanked His Excellency the President of the Republic of Panama, Mr. Ricardo de la Espriella, and the Panamanian Government, for their hospitality in holding this meeting, which they called highly useful. They also expressed their appreciation to the people and authorities of Panama for the many kindnesses shown to them during their stay in the Isthmus nation.

Annex 10

DRAFT RESOLUTION PRESENTED BY THE PERMANENT MISSION OF HONDURAS AT THE SPECIAL MEETING OF THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES HELD ON 5 APRIL 1983

OEA/Ser.G
CP/doc.1353/83
8 April 1983
Original: Spanish.

MISSION OF THE REPUBLIC OF HONDURAS TO THE ORGANIZATION OF AMERICAN STATES

The Permanent Council of the Organization of American States,

Concerned over the serious situation in the area of Central America, where unhappily, internal conflicts in a number of countries are causing loss of human life, the destruction of property and massive movements of people to neighboring countries; and which has a clear tendency to provoke conflict between governments, thus endangering the peace and security of the hemisphere;

Conscious of the obligation on the member States of the Organization of American States to settle their disputes by means of peaceful procedures;

Recalling that there have been a number of initiatives for peace in Central America, which demonstrate the regional and international concern over the crisis in the area, and recognizing that such proposals must be thoroughly studied and examined by the interested countries themselves in an effort to find a solution to the delicate Central American problem;

Taking into consideration that a number of the Central American countries themselves have decided that dialogue, in the proper framework, is the most suitable and most civilized means for looking globally and regionally at Central America's problems and for identifying appropriate procedures for settling the crisis and guaranteeing a stable and permanent peace in the area; and

Recalling that at the protocolary meeting of March 29, 1983, the Minister of Foreign Affairs of the Republic of Honduras formally requested the Permanent Council to urge the governments of the Central American nations to hold a meeting of Ministers of Foreign Affairs of the area, in order to seek responsible, serious and lasting agreements, through global and regional negotiation, to strengthen the peace and restore security in Central America, and further indicating the advisability of having a number of Latin American countries from the Caribbean area attend the meeting as witnesses to the proceedings,

Resolve:

1. To urge the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua to hold a meeting of Ministers of Foreign Affairs as soon

as possible, in order to begin a process of global and regional negotiation that will lead to responsible, serious and lasting agreements to strengthen the peace and restore security in Central America. This meeting would be held whenever and wherever these same countries decide, by agreement, and would be attended by such Latin American governments as they may decide to invite to witness the proceedings. The extent of the participation of the witnesses will be determined by agreement between the governments of the Central American countries and the governments of the countries invited.

2. To request those governments that are invited to provide all the co-operation they can to the meeting and to any measures that may be agreed on there, in order to assure a satisfactory outcome.

3. To instruct the Secretary General to keep abreast of the negotiations, to follow the proceedings closely and report on them from time to time to the Permanent Council, and to provide the interested countries with such co-operation as they may ask of him.

Annex 11

INFORMATIVE BULLETIN OF THE CONTADORA GROUP, 21 APRIL 1983

(Translation)

In view of the worsening of the conflicts in Central America which endanger the peace of the entire region, the Ministers of Foreign Relations of Colombia, Mexico, Panama and Venezuela, acting within the spirit of the Contadora Declaration of 9 January 1983, have carried out joint visits to Costa Rica, Nicaragua, El Salvador, Honduras and Guatemala, on 12 and 13 April, invited by the Governments of those countries.

In the course of these visits, they ascertained the express political will of said Governments, their desire for collaboration and their criteria and viewpoints to create conditions for peace. In light of the positive results of these conversations, they invited the Central American Ministers to a second round of consultations in the Republic of Panama, on 20 and 21 April, for the purposes of procuring a constructive dialogue and facilitating efficient communication in order to reduce tensions, and establishing the basis for a stable and durable peace in the region.

The Ministers of the Contadora Group noted with satisfaction the positive fact that for the first time in the course of the current crisis, the Central American Ministers had agreed to engage in a common dialogue. In addition, they noted and expressed their appreciation for the wide support received from the international community in respect of these actions.

The second round of consultations permitted the understanding with greater precision and depth of the point of view of each Central American country, the definition of the principal themes of the controversy and the formulation of a first diagnosis on the nature of the same.

Among the matters which in the opinion of the Ministers of Contadora require principal attention there must be mentioned: the arms race, the control of armaments and their reduction, the arms traffic, the presence of military advisers and other forms of foreign military assistance, the actions intended to destabilize the internal order of other States, the threats and verbal attacks, the belligerent incidents, and the border tensions, and the repression of human rights and individual and social guarantees, as well as the grave economic and social problems which are at the basis of the crisis affecting the region.

The difference as to the priority, the context and the scope which each country assigns to the different subject, as well as the order and form in which they should be treated were the object of a careful and prolonged examination.

It was agreed that it was necessary to avoid rigid and inflexible approaches which could obstruct the common purpose of reducing tension and furthering peaceful coexistence. For such purpose, an agreement in principle was obtained on the procedures of consultation and negotiation which will have to be followed in the near future in such a way that they will take into account the varying nature of the subjects, whether they be of regional scope or of a bilateral character.

The Ministers of the Contadora Group expressed, once again, their profound conviction that through methods of peaceful solution and an authentic spirit of negotiation it is possible to confront in a positive way the conflicts prevailing in the area.

The Ministers of the Contadora Group reiterate that the responsibility to obtain agreements which guarantee a stable and durable peace correspond principally to the Central American countries themselves. In addition, they made known on the basis of the experience and results of the actions carried out in Panama, it is appropriate to maintain the process of consultation now established, which has proved its worth, efficiency and timeliness. In virtue of which they have agreed to meet again in the coming month of May in Panama. The Ministers of Colombia, Mexico and Venezuela, make known their appreciation for the generous welcome which once again the people and Government of Panama have extended to them.

Annex 12

STATEMENT BY THE PERMANENT REPRESENTATIVE OF HONDURAS TO THE PERMANENT COUNCIL OF THE OAS RELATING TO THREATS TO CENTRAL AMERICAN PEACE AND SECURITY ON 14 JULY 1983

(Translation)

Mr. President and representatives:

We know very well that all the members of this Permanent Council are aware of the critical situation of Central America. We also know that the governments that make up this Organization, as well as their distinguished representatives, know the efforts that the Contadora Group countries — Colombia, Mexico, Panama, and Venezuela — are making to find a just and proper solution for this delicate situation.

The Honduran constitutional government, headed by Roberto Suazo Cordova, thoroughly aware of its duties as a member of this Organization, has given and continues to give its fullest support and co-operation to the efforts of the brother countries that make up the Contadora Group, with the clear objective of reaching, through a civilized dialogue and as soon as possible, serious regional agreements to reach a comprehensive settlement to the problems of the region.

The key issues that characterize the Central American crisis were clearly identified at the outset of preliminary contacts between the foreign ministers of Colombia, Mexico, Panama and Venezuela and the five Central American countries, which culminated in their first meeting held in Panama City from 19 to 21 April.

In the communique issued by the Contadora Group after this meeting, the problem areas were identified as follows: the arms buildup, the control of weapons and their reduction, arms trafficking, the presence of military advisers and other forms of foreign military assistance, actions aimed at destabilizing the internal order of States, threats and verbal aggression, military incidents, and border tension.

There is a remarkable coincidence between this list of matters and the list that my Government presented, through its Foreign Secretary, at this Organization on 23 March 1982, when it proposed a peace plan for Central America. This coincidence confirms the sincerity with which Honduras has approached the problem from the beginning.

It must also be noted that the simple act of listing the problem areas shows that their nature is predominantly multilateral, although this does not exclude problems that can be solved through bilateral negotiations and others that are only the concern of each country.

It is important to bring to the attention of the distinguished representatives the fact that the totalitarian Nicaraguan régime is the main factor in the emergence of the regional crisis, because it has unleashed actions aimed at destabilizing governments in other Central American countries. These actions include, among others, direct support for terrorist and subversive groups. To do this, Nicaragua has the backing of anti-democratic groups and countries that are alien to the Central American region.

This behaviour has prompted a natural rejection in my country, and in other nations in the region. These nations have been forced to take internal security measures to defend their legitimate rights and the democratic system that they freely chose.

My Government recognizes and supports the efforts being made within the Contadora Group to achieve the goals it set out to reach. But despite these efforts, the incidents that have been occurring since the beginning of its fraternal endeavour show the aggravation of the Central American situation as the direct and immediate result of the warmongering and threatening attitude of the Sandinist régime.

Nicaragua has continued in its spiralling arms buildup. It has continued the trafficking of weapons from several places through its territory, particularly to El Salvador, violating our sovereignty.

The actions for the political destabilization of the area have not been interrupted; on the contrary, they have been increased. The acts of provocation and aggression against Honduras have not ceased; rather, they have flared up. In addition, the recent massive mobilization of Nicaraguan troops at our southern border justifies our alarm and apprehension that they are stepping up their plans for a larger military aggression against our country, which would end, once and for all, the hopes for peace and security in the Central American region.

All this clearly shows that Central America is experiencing a widespread conflict provoked by Nicaragua, which has consequences for all countries in the region. Therefore, this is not just a bilateral conflict, as the Sandinist régime has tried to label it.

If it is important for Nicaragua to approach its internal problem — a problem that sometimes prompts conflictive situations of a bilateral nature with other States — at a discussion table, it is of the highest priority for the rest of the Central American countries to discuss the regional problems created by Nicaragua because of its worrisome arms buildup, its direct participation in the destabilization of the other Central American governments, and its clandestine arms trafficking.

The reason that the Honduran Government had to call this special meeting of the Permanent Council was to explain clearly to the Latin American governments the situation in Central America and our peace-loving attitude. In addition to drawing your attention to the gravity of the situation, we are expressing our hope that your effort in achieving peace and security will, because of the moral force it represents, prevent an armed aggression that we foresee will come from Nicaragua.

We hope that the OAS and the governments that comprise it will take due notice of the serious Central American situation and the factors that determine it, so they can calmly analyse the possible measures that could be taken, but within the parameters of the duties and responsibilities prescribed in the OAS Charter.

As a matter of fact, in its preamble, the OAS Charter states that all our States have signed it with the certainty that a genuine sense of Latin American solidarity and good-neighbourly policy can only mean the consolidation, within the framework of democratic institutions, of a system of individual freedom and social justice on this continent based on respect for human rights.

When the main objectives of the OAS were determined, Article 2 was formulated to establish, among other things, the strengthening of peace and security on the continent, the prevention of possible causes of difficulties, the guarantee of peaceful solutions of conflicts between member States, the organization of solidaristic action by these States in the event of an aggression, and the promotion of solutions for political, legal, and economic problems that may arise between them.

In Article 3, the Charter pointed to the following principles: international law is the norm of conduct of the States in their reciprocal relations; international order is essentially characterized by respect for the individuality, sovereignty, and independence of the States; and the obligations established in treaties and in other sources of international law must be faithfully met. Good faith must guide relations among the States. The solidarity of the Latin American States and the lofty goals pursued by them demand that their political organizations be based on an effective exercise of representative democracy. The Latin American States condemn a war of aggression; victory gives no rights. An aggression against one Latin American State is an aggression against all the other Latin American States, and any international controversy that may arise between two or among more Latin American States must be solved through peaceful means.

By reading these articles, I am leaving no doubt about the OAS obligation to contribute, through its direct effort and that of its member States, to a peaceful settlement of conflicts, and to defend the right of our people to organize democratically. These articles also call for solidarity with member States that are bent on defending their institutions in the face of covert or direct aggression by sectors or countries that want to destroy the freedom of men.

In our analysis of the incidents occurring in Central America, with which most countries are familiar, we warn that our continent is facing a war without borders that is encouraged, promoted, supported, and, at times, even led by foreign Marxist forces that are trying to impose, through the armed struggle, their totalitarian political-social system on us.

The names of the groups that comprise this international terrorism are not important. What is relevant is that the characteristics of their terrorist actions for social and economic destabilization are the same. The sources that supply them with weapons and destructive equipment and give them training and logistical support are also the same. The interconnection and public support existing among all these subversive movements and their mutual co-operation show that they are truly part of an overall effort for destabilization and terror within this war without borders that threatens our existence as nations.

Although these efforts for destabilization have not found a favourable echo among the Honduran people, we understand that the threat of the destruction of our way of life and government hangs over us like Damocles' sword. This is shown in the following incidents and actions.

Regarding increases in the Nicaraguan Armed Forces, the Sandinist government currently has at least 129,200 armed men. However, London's International Institute for Strategic Studies gave a higher figure for all branches of the Sandinist Armed Forces for the 1982-1983 period. This figure does not include Interior Ministry troops. This Institute established that the total number of Sandinist troops is 136,700.

We must admit that the Sandinist government has cunningly surprised the international public. It made certain media believe that Nicaragua is the one that could be victim of a large-scale military aggression by Honduras. I am sure, Mr. President, that if we compare the data I have supplied about the Sandinist government's military strength, confirmed by London's International Institute for Strategic Studies, with the number of troops that make up the Honduran Armed Forces — which is no more than 16 per cent of the

Sandinist figure — we will see that the ill-intended charges that the Nicaraguan régime has been making against Honduras are increasingly unbelievable.

Nicaragua has upset the Central American region's military balance. In only 4 years, its armed forces have grown by 1,300 per cent. These forces numbered 10,000 men in 1979. How can they justify such disproportionate growth? Such a large armed force could serve to subject Nicaraguans to the orders of the new government, to try and impose its political and economic model on neighbouring countries, or to begin interventionist military adventures elsewhere in the world.

The size of the Sandinist Armed Forces is much greater than the total of the military troops in the rest of the Central American countries. This fact alone justifies the concern, the insecurity, and the threat that Nicaragua's neighbouring States feel.

The rapid growth of the Sandinist Armed Forces has been accompanied by an arms buildup of unbelievable proportions for Central America. They have weapons that are not only intended for Nicaraguan use, but are sent to Costa Rica, El Salvador, Guatemala, and Honduras for subversive purposes.

In the past few years, the Nicaraguan Army has been equipped with very important anti-aircraft weapons, anti-tank arms, and field artillery, including 152-mm howitzers and multiple rocket launchers with 40 barrels and a range of 20.5 km, tanks and armoured vehicles, aircraft such as MI-8 helicopters and Soviet cargo planes, amphibious tanks, patrol boats, field packs, and hundreds of military trucks for troop transport.

One hundred and twenty Nicaraguans were sent to Bulgaria to undergo pilot training for MIG planes, and 40 more are being trained at the Punta Clara Academy in Cuba. Why is Nicaragua preparing itself in this way?

Your Excellencies must not ignore that this quantity of troops and this diversity of offensive weapons gives reason for alarm throughout the region and prompts us to prepare ourselves for our legitimate defence, because that is the responsibility of any State.

You will be able to observe these proportions graphically in the material that has been distributed to you.

At the same time, we must note that while the Contadora efforts are under way, the Central American picture has continued to change. In the past few months, the shipment of arms and ammunition to Nicaragua has increased. Everyone knows that on 16 April of this year the Brazilian Government seized three Ilyushin planes and a C-130 that were carrying 2,000 tons of weapons and munitions intended for the Sandinist government. The Nicaraguan leaders publicly admitted that these shipments were destined for them. Colonel Mu'ammar al-Qadhafi also made public remarks admitting that although the shipment had been stopped, he would continue to supply all the weapons the Sandinist régime wanted.

A few days after the seizure of the Libyan planes, Costa Rican officials discovered a 500-ton Panamanian-flag ship that was carrying weapons and explosives for Nicaragua.

On 3 June, a Bulgarian ship unloaded Soviet tanks at El Bluff port. On 5 June, a ship that had sailed from the GDR unloaded 100 military trucks and several tons of weapons and war material at Corinto port. On 8 June, authorities of Puerto Limon, Costa Rica, searched the hold of the Soviet ship *Nadezhda Krupskaya* and found that is was carrying several helicopters intended for the Nicaraguan Government.

On 15 June it was learned that the Nicaraguan Navy had transported two gunboats built at the Esterel shipyard near Cannes, France. On the same day, it was said that the Marxist government of South Yemen was negotiating the sale of a certain number of MIG-17 fighters with Nicaragua. This information was confirmed by Miguel Bolanos Hunter, a deserter of the Sandinist counterintelligence forces, who said here in Washington that Nicaragua was in the process of acquiring a Soviet anti-aircraft defence system and 80 MIG planes.

The Honduran Government also knows that early in June the Nicaraguan Government also received at El Bluff port 20 BTR-152 armoured personnel carriers, 5 BRDM vehicles, 4 BM-21 multiple rocket launchers, and other vehicles of lower tonnage whose exact quantity has not been confirmed. The destination of 5,000 boxes of ammunition found inside the *Cloud* is still unknown. This ship, which was found in the middle of the Atlantic Ocean without a flag or crew but loaded with 122-mm shells exclusively used by Soviet cannons, was towed to the Venezuelan coast.

How can it then be said that the Sandinist government is acting in good faith in the negotiations begun within the framework of the Contadora Group, when in the past month alone Nicaragua has received no less than seven large shipments of weapons?

Is Nicaragua preparing to make peace or to wage war? Can it be believed that Nicaragua is willing to reach any kind of agreement on disarmament when it is arming itself excessively? Is it willing to reach agreements on the reduction of troops when the size of the Sandinist Armed Forces is constantly growing? In fact, its most prominent leaders have publicly stated that they hope to have weapons for 200,000 Nicaraguans.

A few days ago, on 6 July, Commander Humberto Ortega Saavedra told 300 militia chiefs that Nicaragua will continue modernizing its army, and that it will create the territorial militias in order to distribute units with better manœuvrability and weapons throughout the territory.

According to an AFP report, Ortega Saavedra stressed that thousands of civilians have joined the infantry reserve battalions, the permanent army units, and the self-defence groups in cities and towns, particularly those on the border with Honduras and Costa Rica.

It is useless to claim that such disproportionate quantities of weapons are intended for use in a direct confrontation with any of the large world powers. Nicaragua's preparation for war has been constant.

From 1979 to 1983, it has built approximately 30 new military installations with Cuban-Soviet advice. These installations will serve to lodge military personnel and keep armoured equipment for transport and logistical supply. Their locations show that the Nicaraguan Government is preparing to launch an offensive operation in the north against our territory.

Nicaragua currently has three airbases capable of receiving MIG-19 and MIG-21 planes. The Montelimar, Puerto Cabezas, and Bluefields installations, as well as Managua's Sandino Airport, have been reconditioned. All their landing strips have been extended to more than 2,000 metres.

At present, the San Ramon air installations are being built with Cuban assistance. These installations will have two runways for the landing and take-off of jets.

The Nicaraguan Government has also built several strategic roads, including that of Managua-Puerto Cabezas, which serve three purposes: to exercise military control over the Nicaraguan Miskito residents, to have a ground supply route from Cuba for supplies entering from the Atlantic Coast, and to develop the area, the reason that has been publicly stated.

Since late June, the Sandinists have been increasing their activities and have been deploying troops along the border area near the Honduran departments of Choluteca and El Paraiso.

The Nicaraguan Government has deployed many troops and much military equipment to places near our country, such as Leon, Ocotal, Chinandega, Somoto, Somotillo, Jalapa, Esteli, Condega, and others. This area covers a line that is approximately 250 km long, forming the so-called northern front, which obviously represents a serious threat to our country. The units that have been deployed include 5 Sandinist People's Army (EPS) battalions, 19 reserve battalions that have been trained and incorporated in the group, 1 tank battalion of the Pablo Ubeda troops, and 3 companies of special units, for a total of 29 mobilized battalions.

On 5 July, it was also reported that the EPS had implemented a new and massive mobilization of troops and Soviet tanks on the Honduran border. This mobilization was confirmed by the Nicaraguan Interior Ministry.

Mr. President and Messrs representatives, another serious problem mentioned by the Contadora Group is the secret arms trafficking.

The Nicaraguan Government has been sending weapons to the rest of Central America, especially to El Salvador, since 1980. In the specific case of Honduras, Nicaragua has repeatedly violated our territory in order to do this.

On 17 January 1981 Honduran Army troops and public security agents seized a large shipment of weapons and military supplies 16 km from Comayagua. The shipment had been well camouflaged inside a van that entered our territory through the Guasaule customs post. These weapons were for Salvadoran guerrillas. We seized M-16, G-3, and Fal rifles; M-1 carbines; 50-cal ammunition clips; Chinese RPG rockets; 81-mm mortar rounds; ammunition clips; cartridges; communications equipment; and medicines. Five Hondurans and 12 Salvadorans were arrested for their involvement in this shipment of weapons and supplies.

The arms traffic has continued through different ways and means. On 7 April 1981 troops of the 11th Infantry Battalion stationed in Choluteca seized another van carrying 7.62-mm and 5.56-mm ammunition that had been packed in polyethylene bags and hidden in the sides of the van. The troops also seized a large quantity of material for the Armed People's Revolutionary Organization, ORPA, of Guatemala, which was supposed to get the entire shipment. This van had left from Nicaragua and was detained at the Guasaule customs post.

Honduran territory has also been illegally used for the passage of troops from Nicaragua to El Salvador. On 26 March 1983 a Honduran patrol caught a group of guerrillas by surprise in Las Cuevitas, Nacaome Municipality, Vale Department, in southern Honduras. They were en route to El Salvador from Nicaragua. Two of the guerrillas were killed in a clash with the Honduran patrol. On this occasion we seized M-16 rifles, one Czechoslovak 7.65-mm machine gun made by FHX, M-16 clips, machine gun clips, cartridges, a portable radio, an FSLN flag, FMLN and FSLN manuals, as well as two notebooks containing full information on the general route used to move military personnel and weapons through Honduras on the way to El Salvador.

The Sandinist régime's intervention in all the countries of the Central American region is also revealed in the training of Hondurans at several of the 11 schools that are operating in Nicaragua for this purpose. They are located in the different military regions of that country.

Nicaragua is also the bridge for the training of Hondurans in Cuba. On 24 January 1983 a group of 16 Hondurans was captured by our authorities in Tegucigalpa. According to statements given by the arrested persons, their purpose was to travel to Cuba via Nicaragua in order to receive guerrilla training and then return to the country to disrupt order. The arrested persons charged that Professor Ramon Amilcar Cerna Gonzalez was responsible for this operation. They also said he was the Honduran contact with high Sandinist officials.

Nicaragua has also introduced another perturbing element into Central American relations, because it has brought into its territory more than 17,000 military and other kinds of advisers, mainly from Cuba, the Soviet Union, the GDR, Bulgaria, North Korea, Vietnam, the PLO and Libya, among others. Such an impressive foreign presence makes Nicaraguan territory an area of intervention by foreign forces. It has also brought to our region the tensions deriving from an extra-continental threat, thus allowing the East-West conflict to become evident here in more ways than one.

Since the Sandinist government took over power and the internal violent conflict that disrupts El Salvador became worse, Honduras has suffered a series of heightened actions against its democratic institutions. These actions are clearly linked to the Nicaraguan Government and the FMLN. We can mention, as an example of these actions, the kidnapping of Italian businessman Higinio Tarantelli D'Andrea in January 1980. He was later murdered. Likewise, there was the April 1980 kidnapping of Texaco general manager Arnold Quiros, in San Pedro Sula, barely 3 days before the elections for deputies to the National Constituent Assembly. Also, there was the takeover of the OAS headquarters in Tegucigalpa. On that occasion, OAS representative Ulises Pichardo and three employees were held hostage. In addition, there was the kidnapping of baker Paul Vinelli by a command of the People's Liberation Forces, FPL, which is part of the FMLN, in December 1980. Vinelli was released on 2 May 1981 after a large ransom in dollars was paid. In March 1981 an aeroplane of the Honduran company SAHSA (Servicio Aereo de Honduras, SA) was hijacked by a command of the Cinchoneros group comprised of three men and a woman and was forced to land in Nicaragua. It was later flown to Panama, from where they demanded that the Honduran Government release Salvadoran FMLN guerrilla leader Facundo Guardado and other guerrilla members who had been arrested in Honduras and charged with the clandestine trafficking of weapons through our territory.

On 5 August 1981 the FMLN kidnapped engineer German Eyl, who was released on 11 December 1981 after a large ransom was paid, again in dollars. On 10 March 1982 businessman Jacques Casanova was kidnapped by a group belonging to the FPL, which is a part of the FMLN. Casanova was freed from a terrorist cell on 19 May 1982 by a police commando operation. On 28 April 1982 a DASH-7 aeroplane belonging to the Honduran airline SAHSA was hijacked in the port of La Ceiba, Atlantida Department, in Honduras. The Lempira group claimed responsibility for this action, it acted in co-ordination with the FMLN. The hijackers finally released the passengers and the aeroplane's crew, and left for Cuba on 1 May 1982. At 18.30 on 17 September 1982, in San Pedro Sula, 12 terrorists violently entered the Cortes Chamber of Commerce and Industries, firing their machine guns and wounding two Honduran citizens. This action initiated the criminal kidnapping of over 100 people, including 2 ministers of state and the president of the Central Bank of Honduras, who were participating in a seminar on economic policies. The Cinchoneros group claimed responsibility for this action; its links with Nicaragua, Cuba, and the Salvadoran guerrillas were clearly established. This group demanded that the Government release Salvadoran guerrillas.

Eight days later, after many delicate conversations conducted through the valuable mediation of the apostolic nuncio in Honduras, the bishop of San Pedro Sula, and with the friendly co-operation of Panama, the terrorists released the hostages and left Honduras for Panama in a Panamanian Air Force aeroplane. Twenty-four hours later, they continued their trip to Cuba. On 14 December 1982 a group from the People's Revolutionary Movement, MRP, kidnapped Doctor Xiomara Suazo Estrada in Guatemala City. She is the daughter of Honduran President Roberto Suazo Cordova.

Mr. President, this list of actions is not complete. Other terrorist actions include the destruction of two power stations that left 80 per cent of the Honduran capital without electricity, and the detonation of explosive devices in offices belonging to the Salvadoran airline TACA, and Air Florida, the Panamerican Life Insurance Company and IBM, all US companies.

Beyond our borders, explosive charges were placed in SAHSA's offices in San José, Costa Rica and in Guatemala City, Guatemala. The Costa Rican Government expelled two Nicaraguan diplomats because they were responsible for these actions.

On 14 April 1983 the Honduran diplomatic mission in Bogotá, Colombia, was blown up, while Nicaraguan Foreign Minister Miguel d'Escoto Brockmann was there on an official visit. This terrorist act was perpetrated with great cruelty, for the Honduran consul was tied up and the bomb was placed in front of him and detonated. The Honduran official suffered grave wounds and contusions. Other terrorist acts include the placement of bombs in the Chilean and Argentine embassies in Tegucigalpa, at the Honduran brewery in San Pedro Sula, and at the Texaco refinery in Puerto Cortes, and the direction of machine-gun fire at a group of members of the US military mission in Honduras.

At the same time, the Honduran diplomatic missions in Ecuador, Mexico, Venezuela, France, Great Britain and Germany were subjected to assaults and large demonstrations. The persecution of our country is also evident on our border, where Nicaragua harasses Honduran border towns. From 1979 to date, the Sandinist regime has staged nearly 200 attacks on and violations of our territory, airspace, and water. In these incidents, unarmed civilians and Honduran troops have either been killed or wounded. When the Sandinist forces enter our territory, they pillage and destroy and kidnap defenceless Honduran citizens. They attack our fishing boats, within our territorial waters in the Atlantic and Pacific Oceans, with artillery fire. The boats are captured, along with their crews, and taken to Nicaraguan ports.

The Nicaraguan leaders level all kinds of verbal threats and insults against Honduras and its highest officials, in an attempt to create a climate of increased bilateral tension. Last year, Commander Tomas Borge said in Madrid that Nicaragua would give all necessary support to guerrilla actions in Honduras. In March 1983 Commander Humberto Ortega Saavedra threatened Honduras with war, saying that Nicaragua's troops, aeroplanes, tanks, artillery and all of its offensive armament were ready to perpetrate an act of aggression against our country. These statements provoked a protest from Honduras, conveyed by its Foreign Secretariat.

In April 1983 this same commander told *The New York Times* that Honduran revolutionaries could strike the Honduran Armed Forces if they continued to launch attacks on Nicaraguan territory. This statement was also rejected by my Government. During the same month, the Nicaraguan Foreign Minister made a statement in Panama, declaring that the chances of open war between his country and Honduras had increased. In a speech before the UN Security Council in May 1983 the Foreign Minister said that Nicaragua could start a war with Honduras.

Last month, Sergio Ramirez Mercado, member of the Nicaraguan Junta of the Government of National Reconstruction, said in Caracas, Venezuela, that everything seemed to indicate there would be an armed confrontation between Honduras and Nicaragua. Commander Tomas Borge also said last June, in a speech before Nicaraguan workers, that terrible and glorious times are near. He asked the workers to make sacrifices and to prepare for war against Honduras. More recently, on 2 July, the Nicaraguan Interior Minister himself told the UPI news agency that he saw no chance that an agreement would be reached to avoid war with Honduras.

All of these statements and threats have been accompanied by false accusations that Honduran soldiers are harassing the Nicaraguan troops. They have even reached the extreme point where the Nicaraguan Foreign Minister said on 3 May 1983 that Honduran soldiers had crossed the border and invaded Nicaragua. This information was so absurd and incredible that the Nicaraguan Foreign Minister himself corrected the statement, saying this was an erroneous interpretation of the communique issued by the Foreign Ministry.

Mr. President, Messrs representatives, this is the current situation in my country, a country that is being threatened, harassed, and attacked by the Sandinist government, which has shown not the slightest hesitation in unleashing an unrestrained and vigorous arms buildup, thus breaking the terms of security in the Central American Isthmus; which is indifferent toward the disastrous consequences that the creation of an enormous army, which exceeds the number of military troops of the rest of the Central American countries combined, will have for the region, which continues to be the main weapons supplier for the subversive and terrorist movements in the Central American region, which cares nothing about the consequences of permitting the use of its territory by extraregional and extracontinental forces, threatening the peace and security of the entire American continent; and which continues to harass our southern border and to kill Honduran peasants and foreigners, such as the case of two US journalists who were killed recently by the explosion of a mine placed by the Sandinist People's Army, in violation of our territory. These incidents have also provoked a mass exodus of Honduran border inhabitants to our interior.

Honduras has not broken its word or the gentlemen's agreements that it has entered into. The distinguished representatives are aware of the good will with which Honduras accepted the suspension of discussions of its proposal to this council, so that the Contadora Group's noble efforts would have an opportunity to be fruitful. You are also aware of the commitment by which Nicaragua undertook to abstain from bringing actions up within the United Nations, a commitment that the Sandinist government did not honour.

At a news conference in Mexico City on 13 April 1983, His Excellency Mexican Foreign Secretary Bernardo Sepulveda admitted that Honduras's conciliatory position within the OAS made Contadora's fraternal efforts possible. Referring to the meeting that the group's foreign ministers held in Panama and that established their efforts, the Mexican Foreign Secretary said, and I quote:

> "It was initially noted that the most immediate task was to guarantee that the OAS Permanent Council would not impede the Contadora Group foreign ministers' actions, in terms of initiatives to find solutions in Central America. This was an urgent matter, because the OAS Permanent Council was scheduled to debate a draft of a resolution proposed by Honduras on Monday afternoon. Fortunately, through a series

> of talks that we held with other parties interested in this issue, it was decided that the OAS Permanent Council would postpone this discussion and in this way there would be an easing of pressure, so that the regional forum could transfer the issue to the Panama forum, that is, to the Contadora foreign ministers. At the same time, it was stressed that it would be advisable that efforts be made in the United Nations so that no action would be taken there that would duplicate the work that had just begun in Panama on the previous Monday.
>
> The parties that are interested in this issue accepted our proposal with great interest and decided to request that the OAS Permanent Council postpone discussion of the issue. This was the first action that was taken on the issue and that [I repeat, Foreign Secretary Sepúlveda said this] freed us to take direct action on the subject."

This verbatim statement and the well-known circumstances of what has taken place render any further comment on the situation unnecessary. Nevertheless, they reaffirm our view that it is essential that the fulfilment of agreements that might be reached among the Central American governments to guarantee peace must be effectively verifiable.

According to the OAS Charter, this subject falls under the essential objectives and nature of our organization. It is also advisable that we note that the régime that has prevailed in Nicaragua since 1979 was born under the inspiration of and with the support of the OAS. On that occasion, the following essential foundations for its historical viability were established:

(1) The immediate replacement of the Somozist régime. (2) Installation in Nicaragua of a democratic government whose composition would include the main representative groups that are opposed to the Somoza regime and which would reflect the free will of the Nicaraguan people. (3) The convocation of free elections as soon as possible, which will lead to the establishment of a truly democratic government that will guarantee peace, freedom, and justice.

Of these foundations, as established and fully accepted at the 17th consultative meeting, particularly by those who have since led the Nicaraguan Junta of the Government of National Reconstruction, only the first has been fulfilled. The rest of the foundations, which constitute the new régime's moral and legal commitment to this organization, have been made a mockery, just as the continent's political desire has been made a mockery.

Mr. President, we ask the OAS Permanent Council to take note of our speech, which is supplemented by the illustrative material that we have distributed. We also ask it to take note of Honduras's unyielding desire to promote peace in our region and to further strengthen the democratic institutions that are the common aspiration of our peoples. We declare before you that within that spirit, Honduras will attend the next Contadora Group meeting and that, in short, it will fulfil its obligations as a peace-loving State and a member of the OAS.

Mr. President, before ending my speech I would like to invite those colleagues who wish to do so to view, once you have closed the session, a short documentary, lasting 12 minutes and 40 seconds, in this same room before going to the reception that you, Mr. President, are holding for His Excellency the Guatemalan Ambassador. Thank you very much, Mr. President.

Annex 13

CANCUN DECLARATION ON PEACE IN CENTRAL AMERICA. DECLARATION BY THE PRESIDENTS OF COLOMBIA, MEXICO, PANAMA AND VENEZUELA (UNITED NATIONS DOCUMENT S/15877, ANNEX), CANCUN, 17 JULY 1983

LETTER DATED: 9 JULY 1983 FROM THE REPRESENTATIVES OF COLOMBIA, MEXICO, PANAMA AND VENEZUELA TO THE SECRETARY-GENERAL

[Original: Spanish]
[19 July 1983]

We have the honour to transmit to you the text of the Cancún Declaration on Peace in Central America, drawn up by the Presidents of Colombia, Mexico, Panama and Venezuela at the close of the meeting which they held on 17 July 1983 at Cancún, Mexico.

We would request you to have the text of this Declaration circulated as a document of the General Assembly and of the Security Council.

(Signed) Carlos ALBAN HOLGUIN,
Permanent Representative of Colombia
to the United Nations.

(Signed) Miguel MARIN BOSCH,
Charge d'affaires a.i.
of the Permanent Mission of Mexico
to the United Nations.

(Signed) Leonardo KAM,
Chargé d'affaires a.i.
of the Permanent Mission of Panama
to the United Nations.

(Signed) Alberto MARTINI URDANETA,
Permanent Representative of Venezuela
to the United Nations.

Annex

Cancún Declaration on Peace in Central America

In view of the worsening of the conflicts in Central America, Heads of State of Colombia, Belisario Betancur, of Mexico, Miguel de la Madrid, of Panama, Ricardo de la Espriella, and of Venezuela, Luis Herrera Campins, decided to meet at Cancún (Mexico) today, 17 July 1983.

We considered the critical situation in Central America and agreed that we were all deeply concerned at the speed with which it was deteriorating, as evidenced by an escalation of violence, the progressive mounting of tensions, frontier incidents and the threat of a flare-up of hostilities that might spread. All this, combined with the arms race and outside interference, creates a tragic setting affecting the political stability of the region and ruling out any progress and consolidation of institutions responsive to the democratic yearning for freedom, social justice and economic development. The conflicts in Central America present the international community with the choice of either resolutely supporting and strengthening the path of political understanding by offering constructive solutions, or passively accepting the accentuation of factors which could lead to extremely dangerous armed confrontations.

The use of force is an approach that does not dissolve, but aggravates the underlying tensions. Peace in Central America can become a reality only in so far as respect is shown for the basic principles of coexistence among nations: non-intervention; self-determination; sovereign equality of States; co-operation for economic and social development; peaceful settlement of disputes and free and authentic expression of the popular will. The creating of conditions conducive to peace in the region depends mainly on the attitude and the genuine readiness for dialogue of the countries of Central America, which must shoulder the primary responsibility and make the major effort in the search for agreements ensuring peaceful coexistence.

Accordingly, it is essential that the political will to seek understanding, which has been displayed since the very beginning of the Contadora Group's activities, should continue to be clearly expressed in continued efforts for peace, so that it may be translated into concrete actions and commitments.

It is also necessary that other States with interests in and ties to the region should use their political influence in helping to strengthen the channels of understanding and should unreservedly commit themselves to the diplomatic approach to peace.

The efforts of the Contadora Group have so far led to the initiation of a dialogue involving all the Governments of Central America, the establishment of machinery for consultation and the drawing up, by unanimous agreement, of an agenda covering the salient aspects of the problems of the region.

These achievements, although still inadequate, have been encouraged by the support of many countries, of a number of organizations and of the most varied opinion groups at the international level. All are agreed that the activities of the Contadora Group have helped to mitigate the dangers and reduce the risks of a widespread confrontation and have made it possible to identify problems and causes of what is now a landscape of conflict and fear.

This generous support by the international community impels us to persist in our endeavours and to make every effort in a cause, the noble purposes of which outweigh any possible lack of understanding.

Inspired by our countries' broad spirit of solidarity with the fraternal peoples of Central America, we consider it necessary to expedite the process that may transform the will for peace into proposals which, if properly developed, can effectively contribute to the settlement of conflicts.

To that end, we have agreed on the general lines of a programme to be proposed to the countries of Central America which requires, in addition to strict compliance with the essential principles governing international relations, the conclusion of agreements and political commitments that will lead, region-wide, to effective control of the arms race, the elimination of foreign advisers, the creation of demilitarized zones, the prohibition of the use of the territory of some States for the development of political or military destabilization actions in other States, the eradication of transit of and traffic in arms as well as the prohibition of other forms of aggression or interference in the internal affairs of any country in the area.

In order to implement this general programme, it will be necessary to conclude agreements embodying political commitments designed to ensure peace in the region. These agreements could include:

- Commitment to put an end to all prevailing situations of belligerency;
- Commitment to freeze offensive weapons at their current level;
- Commitment to begin negotiations on agreements for the control and reduction of current stocks of weapons, with the establishment of appropriate supervisory machinery;
- Commitment to prohibit the existence in national territory of military installations belonging to other countries;
- Commitment to give prior notice of troop movements near frontiers when the contingents exceed the limits set in the agreement;
- Commitment to organize, as appropriate, joint boundary frontier or international supervision of frontiers by groups of observers chosen by common agreement by the parties concerned;
- Commitment to establish mixed security commissions with a view to preventing and, where appropriate, resolving frontier incidents;
- Commitment to establish internal control machinery to prevent the transit of weapons from the territory of any country in the region to the territory of another;
- Commitment to promote a climate of détente and confidence in the area by avoiding statements and other actions that jeopardize the essential climate of political confidence required;
- Commitment to co-ordinate systems of direct communication between Governments with a view to preventing armed conflicts and generating an atmosphere of mutual political confidence.

Similarly we consider that, simultaneously with the implementation of this general programme, the task of resolving specific differences between countries should be tackled initially by the signing of memoranda of understanding and the establishment of mixed commissions that will enable the parties to undertake joint action and guarantee the effective control of their territories, especially in frontier areas.

These measures, aimed at eliminating the factors which disturb the peace of the region, should be accompanied by a major internal effort to strengthen democratic institutions and guarantee respect for human rights.

To this end it is necessary to improve methods of consulting the people, ensure that the various currents of opinion have free access to the electoral process and promote the full participation of citizens in the political life of their country.

The strengthening of democratic political institutions is closely linked to evolution and progress in the field of economic development and social justice. In fact, these are two aspects of a single process whose ultimate goal is the implementation of the fundamental values of mankind.

The economic backwardness which lies at the root of instability in the region and is the immediate cause of many of its conflicts should be approached from this standpoint.

Some of the steps most urgently needed to offset the effects of the world economic crisis are the strengthening of integration machinery, an increase in intra-zonal trade and the exploitation of opportunities for industrial complementarity. However, such efforts by the countries concerned must be supplemented by the support of the international community, especially the industrialized countries, through development credits, co-operation programmes and access of Central American products to their markets. The Governments of the countries of the Contadora Group reiterate their decision to continue the programmes of co-operation that benefit the subregion and offer their assistance in channelling international support towards these goals of economic reactivation. On the basis of these general outlines we have requested our Ministers for Foreign Affairs to prepare at the next joint meeting of Ministers for Foreign Affairs specific proposals that will be submitted to the Central American countries for their consideration.

We appeal to all members of the international community, especially those which have expressed sympathy with the efforts of the Contadora Group, and to the Secretary-General of the United Nations and the Chairman of the Permanent Council of the Organization of American States, to contribute, with their experience and diplomatic capability, to the search for peaceful solutions to the problems of Central America. For all these reasons we have contacted the leaders of Government of the countries of the American continent with a view to obtaining their solidarity, which is necessary for us.

We, Heads of State of Colombia, Mexico, Panama and Venezuela, reaffirm the aims that unite our Governments in the task of seeking to contribute to the establishment of the just and lasting peace desired by the peoples of Central America.

Done at Cancún (Mexico) on 17 July 1983.

(Signed) Belisario BETANCUR,
President of the Republic of Colombia.

(Signed) Miguel DE LA MADRID,
President of the United Mexican States.

(Signed) Ricardo DE LA ESPRIELLA,
President of the Republic of Panama.

(Signed) Luis HERRERA CAMPINS,
President of the Republic of Venezuela.

Annex 14

SPEECH OF 19 JULY 1983 BY COMMANDER DANIEL ORTEGA SAAVEDRA, CO-ORDINATOR OF THE NATIONAL RECONSTRUCTION GOVERNING JUNTA OF NICARAGUA, *LA TRIBUNA*, TEGUCIGALPA, 22 JULY 1983 (EXCERPT)

(Translation)

. . . The Government of National Reconstruction will accept that the beginning of the negotiation process promoted by the Contadora Group be of a multilateral character so that there should be no more excuses and that those who declare themselves to be interested in peace take concrete steps to further the process which may establish the bases thereof.

Furthermore, bearing in mind the fact that the Heads of State have entrusted their Ministers for Foreign Relations with the preparation of specific proposals to be submitted for consideration by the Central American countries on account of the forthcoming combined meeting of Foreign Ministers and that the major dangers to peace in the region could arise from the exacerbation of the military conflicts already existing, the Sandinista National Liberation Front proposes that discussions begin immediately on the following basic points:

(1) An agreement to put an end to any belligerent situation prevailing by means of the immediate signature of a non-aggression pact between Nicaragua and Honduras.

(2) Absolute cessation of any supply of weapons by any country to the forces in conflict in El Salvador so that the nation can solve its problem without external interference.

(3) Absolute cessation of any military support in the form of supply of weapons, training, utilization of territory to launch attacks or any other form of aggression on the forces opposing any of the Central American Governments.

(4) Undertakings ensuring absolute respect for self-determination of the Central American peoples and non-interference in the internal matters of each country.

(5) Cessation of attacks and economic discrimination against any Central American country.

(6) The non-installation of foreign military bases in the territory of Central America and also the suspension of military exercises in the area of Central America with participation of foreign armies.

Progress in the solution of these points will automatically contribute towards a discussion of other points which likewise concern the Central American States and which are recorded in the Contadora Group agenda in order to find an acceptable and lasting solution to the security of the countries in the region.

When the agreements have been reached with the aid of the Contadora Group and when they have been approved by it, the Security Council of the United Nations as the supreme international organization entrusted with ensuring international peace and security, should supervise and guarantee to all countries that these agreements will be implemented.

Nicaragua states its willingness to assume, with full responsibility, all commitments arising from the said agreements and makes this clear by accepting the point of view of the Heads of States of the Contadora Group to the intent that the task of settling specific differences between countries must be begun initially with the signature of a memorandum of understanding and the creation of commissions allowing the parties to carry out combined actions and guarantee effective control of their territories, especially in the frontier zones. Until these initiatives materialize, the people of Nicaragua will remain completely mobilized, ready to erect a wall of patriotism and guns wherever the aggressors may strike . . .

Annex 15

Press Release of the Ministers of Foreign Relations of the Contadora Group and of the Central American Countries, 30 July 1983

(Translation)

In furtherance of the diplomatic efforts in favour of Central American peace, on 28, 29 and 30 July there met in the City of Panama the Ministers of Foreign Relations of Colombia, Mexico, Panama and Venezuela, members of what is known as the Contadora Group, with their colleagues from Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

During this third joint meeting the evolution of the Central American situation was examined and in a climate of frank cordiality, the process of negotiations leading to the construction of a stable and durable peace in the entire region was advanced.

In light of this objective, the Central American Ministers made known their acceptance and gave their support to the Cancún Declaration recently promulgated by the Heads of State of Colombia, Mexico, Panama and Venezuela. They agreed, in addition, that it was necessary to establish the basis for the indispensable agreements to achieve that peace, and for such reasons, the Ministers of Costa Rica, El Salvador, Guatemala and Honduras, on the one hand, and the Minister of Nicaragua on the other hand, formulated concrete contributions on the criteria and viewpoints of the countries with respect to the characteristics, contents and scope which such agreements should have.

For the purpose of analysing the proposals presented, of identifying the points of agreement, obtaining the compromises necessary and furthering the peace process it was agreed to recommence the joint deliberations in the course of the month of August in the city of Panama.

The participants were unanimously satisfied by the constructive atmosphere which prevailed in the course of the sessions. A new phase has been initiated in the process of the reduction of tensions characterized by a fluid dialogue and a clear political will. In such conditions, it will be possible to bring together the basis for a regional political compromise which will guarantee peace, re-establish security, promote democracy and stimulate co-operation for development.

On the second anniversary of the death of General Omar Torrijos Herrera, the nine Ministers meeting in Panama rendered a deserved homage to his memory, depositing a wreath in the mausoleum where his remains rest and making known their recognition of the ideals of peace, independence and free determination of the people, principles for which Omar Torrijos fought with a visionary spirit.

President Ricardo de la Espriella kindly received the nine Ministers, who manifested their gratitude for the efforts of the government in favour of regional coexistence and for the generous hospitality of the Panamanian people.

Annex 16

"Document of Objectives" Issued by the Joint Meeting of Ministers of Foreign Relations of the Contadora Group and of the Central American Countries (United Nations Document S/16041, Annex), 9 September 1983

Considering:

The situation prevailing in Central America, which is characterized by an atmosphere of tension that threatens security and peaceful coexistence in the region, and which requires, for its solution, observance of the principles of international law governing the actions of States, especially:

The self-determination of peoples;
Non-intervention;
The sovereign equality of States;
The peaceful settlement of disputes;
Refraining from the threat or use of force;
Respect for the territorial integrity of States;
Pluralism in its various manifestations;
Full support for democratic institutions;
The promotion of social justice;
International co-operation for development;
Respect for and promotion of human rights;
The prohibition of terrorism and subversion;
The desire to reconstruct the Central American homeland through progressive integration of its economic, legal and social institutions;

The need for economic co-operation among the States of Central America so as to make a fundamental contribution to the development of their peoples and the strengthening of their independence;

The undertaking to establish, promote or revitalize representative, democratic systems in all the countries of the region;

The unjust economic, social and political structures which exacerbate the conflicts in Central America;

The urgent need to put an end to the tension and lay the foundations for understanding and solidarity among the countries of the area;

The arms race and the growing arms traffic in Central America, which aggravate political relations in the region and divert economic resources that could be used for development;

The presence of foreign advisers and other forms of foreign military interference in the zone;

The risks that the territory of Central American States may be used for the purpose of conducting military operations and pursuing policies of destabilization against others;

The need for concerted political efforts in order to encourage dialogue and understanding in Central America, avert the danger of a general spreading of the conflicts, and set in motion the machinery needed to ensure the peaceful coexistence and security of their peoples;

Declare their intention of achieving the following objectives:

To promote détente and put an end to situations of conflict in the area, refraining from taking any action that might jeopardize political confidence or prevent the achievement of peace, security and stability in the region;

To ensure strict compliance with the aforementioned principles of international law, whose violators will be held accountable;

To respect and ensure the exercise of human, political, civil, economic, social, religious and cultural rights;

To adopt measures conducive to the establishment and, where appropriate improvement of democratic, representative and pluralistic systems that will guarantee effective popular participation in the decision-making process and ensure that the various currents of opinion have free access to fair and regular elections based on the full observance of citizens' rights;

To promote national reconciliation efforts wherever deep divisions have taken place within society, with a view to fostering participation in democratic political processes in accordance with the law;

To create political conditions intended to ensure the international security, integrity and sovereignty of the States of the region;

To stop the arms race in all its forms and begin negotiations for the control and reduction of current stocks of weapons and on the number of armed troops;

To prevent the installation on their territory of foreign military bases or any other type of foreign military interference;

To conclude agreements to reduce the presence of foreign military advisers and other foreign elements involved in military and security activities, with a view to their elimination;

To establish internal control machinery to prevent the traffic in arms from the territory of any country in the region to the territory of another;

To eliminate the traffic in arms, whether within the region or from outside it, intended for persons, organizations or groups seeking to destabilize the Governments of Central American countries;

To prevent the use of their own territory by persons, organizations or groups seeking to destabilize the Governments of Central American countries and to refuse to provide them with or permit them to receive military or logistical support;

To refrain from inciting or supporting acts of terrorism, subversion or sabotage in the countries in the area;

To establish and co-ordinate direct communication systems with a view to preventing or, where appropriate, settling incidents between States of the region;

To continue humanitarian aid aimed at helping Central American refugees who have been displaced from their countries of origin, and to create suitable conditions for the voluntary repatriation of such refugees, in consultation with the co-operation of the United Nations High Commissioner for Refugees (UNHCR) and other international agencies deemed appropriate;

To undertake economic and social development programmes with the aim of promoting well-being and an equitable distribution of wealth;

To revitalize and restore economic integration machinery in order to attain sustained development on the basis of solidarity and mutual advantage;

To negotiate the provision of external monetary resources which will provide additional means of financing the resumption of intra-regional trade, meet the serious balance-of-payments problems, attract funds for working capital, support programmes to extend and restructure production systems and promote medium- and long-term investment projects;

To negotiate better and broader access to international markets in order to increase the volume of trade between the countries of Central America and the rest of the world, particularly the industrialized countries; by means of a revision of trade practices, the elimination of tariff and other barriers, and the achievement of price stability at a profitable and fair level for the products exported by the countries of the region;

To establish technical co-operation machinery for the planning, programming and implementation of multi-sectoral investment and trade promotion projects.

The Ministers for Foreign Affairs of the Central American countries, with the participation of the countries in the Contadora Group, have begun negotiations with the aim of preparing for the conclusion of the agreements and the establishment of the machinery necessary to formalize and develop the objectives contained in this document, and to bring about the establishment of appropriate verification and monitoring systems. To that end, account will be taken of the initiatives put forward at the meetings convened by the Contadora Group.

Panama City, 9 September 1983.

Annex 17

Measures to Be Taken to Fulfil the Commitments Entered into in the Document of Objectives by the Joint Meeting of Ministers of Foreign Relations of the Contadora Group and the Central American Countries (United Nations Document A/39/71, S/16262, Appendix), 8 January 1984

The Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua,

Considering:

1. The adoption by the five Governments in September 1983 of the "Document of Objectives" as a frame of reference for the regional agreement to achieve peace.

2. The necessity of instituting measures designed to fulfil the commitments embodied therein,

Resolve:

I. *To adopt* the following measures for immediate application:

1. Security questions:

(a) The preparation by each of the Central American States of a register or inventory of military installations, weapons and troops, with a view to developing guidelines on a policy for their verification and reduction which sets ceilings and provides for a reasonable balance of forces in the region;

(b) The establishment of a list and timetable in each country with a view to reducing, and eventually eliminating, the presence of foreign military advisers and other outside elements participating in military or security activities;

(c) The identification and elimination of all forms of support or encouragement to and financing or toleration of irregular groups or forces engaged in destabilizing Central American Governments;

(d) The identification and disbandment of irregular groups or forces which, acting from or traversing the territory of a Central American State, participate in destabilizing actions against another Government of the region;

(e) The identification of areas, routes and channels used for illegal traffic in arms within and outside the region, so that such traffic may be stopped;

(f) The establishment of mechanisms of direct communication with a view to averting incidents between States and devising solutions in the event of the occurrence of such incidents;

2. Political matters:

(a) The promotion of national reconciliation on the basis of justice, freedom and democracy and the establishment for this purpose of machinery to facilitate dialogue between the countries of the region;

(b) The guaranteeing of full respect for human rights and, to this end, the securing of compliance with the obligations embodied in international legal instruments and the relevant constitutional provisions;

(c) The promulgation or review of legislation on the electoral process with

a view to the holding of elections that guarantee the effective participation of the people;

(d) The establishment of independent electoral bodies to prepare reliable electoral registers and to ensure that the electoral process is impartial and democratic;

(e) The issue or, where appropriate, the updating of regulations guaranteeing the experience and participation of political parties which represent the different currents of opinion;

(f) The establishment of an electoral timetable and the adoption of measures designed to ensure that the political parties participate on an equal footing;

(g) Endeavours to bring about genuine political trust between the Governments of the area in order to promote détente;

3. Economic and social questions:

(a) The strengthening of programmes of assistance to Central American refugees and the promotion of voluntary repatriation, with the co-operation of the interested Governments, in liaison and/or co-ordination with national humanitarian bodies and competent international organizations;

(b) The extension of full co-operation to the Central American Integration Bank, ECLA, the Committee for Action in Support of the Economic and Social Development of Central America and the General Treaty on Central American Integration (SIECA);

(c) Joint negotiations to obtain external resources to help revitalize Central American integration processes;

(d) The encouragement of trade within the region and the promotion of greater and better access of Central American products to the international markets;

(e) The promotion of joint investment projects;

(f) The establishment of just economic and social structures which will reinforce an authentic democratic system and give the peoples full access to the judicial system, employment, education, health and culture;

II. *To authorize:* the Technical Group, as advisory body of the Joint Meeting of the Ministers for Foreign Affairs of Central America and of the Contadora Group, to follow up the measures provided for in this document on security, political and economic and social questions. The Technical Group will report to the meeting of Ministers on the progress made in carrying out these measures;

III. *To establish:* in the framework of the Contadora Group, three working commissions for the purpose of preparing studies, legal drafts and recommendations concerning security and political matters and economic and social questions and of making proposals for verifying and supervising the implementation of the measures agreed upon;

The working commissions will be governed by the following rules:

(a) They will be composed of representatives of the Governments of Central America, and each country may designate up to two advisers per commission;

(b) They will be convened by the Contadora Group, which will participate in their meetings in order that it may continue to collaborate actively in the study of the assigned topics and in the preparation of agreements;

(c) Recourse to external advisers, whether the latter are experts in their

individual capacity or representatives of international organizations, must be approved in advance by consensus;

(d) The working commissions will be set up by 31 January 1984 at the latest, for which purpose the participating Governments will designate their representatives and advisers and will communicate their names in due course to the Ministry of Foreign Affairs of the Republic of Panama;

(e) Each commission will prepare and present its timetable and programme of work before 29 February 1984;

(f) The working commissions will carry out their tasks within the framework established by the "Document of Objectives". They will be co-ordinated by the Technical Group and will present their studies, legal drafts and recommendations to the Joint Meeting of Ministers for Foreign Affairs by 30 April 1984 at the latest.

Panama, 8 January 1984.

Annex 18

Lettre, en date du 1er mai 1984, adressée au Secrétaire général de l'Organisation des Nations Unies par la représentante du Panama. Annexe : Bulletin d'information publié à Panama le 1er mai 1984 par les ministres des relations extérieures des pays membres du groupe de Contadora et des pays d'Amérique centrale (Nations Unies, doc. S/16522), 1er mai 1984

[Original : espagnol]
[2 mai 1984]

J'ai l'honneur de vous faire tenir le texte du bulletin d'information publié à l'issue de la sixième réunion conjointe des ministres des relations extérieures des pays membres du groupe de Contadora et des pays d'Amérique centrale, qui s'est tenue à Panama les 30 avril et 1er mai 1984.

Je vous prie de bien vouloir faire distribuer le texte de la présente lettre et du bulletin en tant que document de l'Assemblée générale et du Conseil de sécurité.

La chargée d'affaires par intérim
de la mission permanente du Panama
auprès de l'Organisation des Nations Unies,
(Signé) Flora L. NORIEGA.

Annexe

Bulletin d'information publié à Panama le 1er mai 1984 par les ministres des relations extérieures des pays membres du groupe de Contadora et des pays d'Amérique centrale

Les ministres des relations extérieures des pays membres du groupe de Contadora (Colombie, Mexique, Panama et Venezuela) et du Costa Rica, d'El Salvador, du Guatemala, du Honduras et du Nicaragua se sont réunis à Panama le 30 avril 1984.

L'objectif de cette sixième réunion conjointe des ministres des relations extérieures était de poursuivre et de renforcer l'action diplomatique en vue de prévenir l'aggravation des tensions et des conflits en Amérique centrale, de créer les conditions nécessaires pour parvenir à une paix stable et d'instaurer un climat de confiance, de compréhension et de coopération entre les pays de la région.

Conformément à l'ordre du jour annoncé, les ministres des relations extérieures ont reçu les conclusions des commissions chargées des questions politiques, des questions de sécurité et des questions économiques et sociales créées en application des « Mesures à prendre pour assurer l'exécution des engagements assumés dans le document exposant les objectifs visés » du 8 janvier 1984 *[voir S/16252]*.

Au cours des trois derniers mois, les commissions ont tenu quatre sessions de travail pendant lesquelles elles ont étudié divers documents et de nombreuses propositions dans leurs domaines de compétence respectifs. Les travaux, supervisés par le groupe technique, ont été extrêmement satisfaisants.

La commission chargée des questions politiques a étudié à fond et avec intérêt toutes les propositions qui lui ont été soumises pour examen. Elle s'est consacrée à quatre grands domaines: la réconciliation nationale, les droits de l'homme, les processus électoraux et la détente régionale. Elle a adopté diverses propositions relatives à la création d'instruments permettant d'élaborer et d'appliquer une politique de détente fondée sur la confiance entre États afin de réduire véritablement les tensions politiques et militaires existantes. Le consensus s'est également fait sur l'adoption de mesures visant à créer des institutions qui soutiennent les principes de la démocratie représentative et pluraliste et le plein respect des droits de l'homme — ou à renforcer de telles institutions lorsqu'elles existent —, en vue d'encourager et de concrétiser le processus de réconciliation nationale. La commission est également parvenue à un compromis sur les règles destinées à empêcher toute atteinte à la vie, à la liberté et à la sécurité personnelle des amnistiés.

Un consensus s'est fait jour quant à la nécessité de garantir la stabilité et l'indépendance du pouvoir judiciaire, qui doit être en mesure d'agir à l'abri des pressions politiques, et sur des recommandations concernant le libre accès aux processus électoraux ainsi que l'échange de données d'expérience et d'informations entre les organismes des pays d'Amérique centrale œuvrant dans des domaines d'activités similaires.

La commission chargée des questions de sécurité a obtenu un consensus sur plusieurs points de son ordre du jour. Tous les pays ont convenu de la nécessité de rétablir un climat de confiance, de stabilité et de sécurité dans la région et ont étudié les moyens pratiques d'y parvenir.

Cette commission a atteint une large mesure d'accord quant aux principes juridiques en matière de sécurité, aux mesures destinées à promouvoir la confiance, à l'interdiction de l'installation de bases militaires et de toute autre forme d'ingérence militaire étrangère.

Elle est également parvenue à un consensus sur les principes destinés à interdire l'utilisation du territoire national par des forces irrégulières contre les pays voisins ainsi que les actions de déstabilisation, de sabotage et de terrorisme; elle a examiné divers mécanismes concrets de prévention et de règlement des incidents frontaliers.

Si le retrait des conseillers étrangers a donné lieu à des divergences d'opinion quant aux modalités les plus appropriées de ce retrait, son principe n'en a pas moins été approuvé par une grande partie des membres de la commission. Celle-ci a étudié avec soin les problèmes créés par le surarmement et défini des critères de base pour déterminer les niveaux souhaitables de développement militaire des pays d'Amérique centrale ainsi que les termes qui seront utilisés pour dresser l'inventaire des ressources militaires de la région.

Enfin, les participants ont examiné diverses propositions concernant les moyens et instruments les plus appropriés de vérification et de contrôle. A cet égard, ils ont souligné la nécessité de constituer un dispositif impartial dans ces deux domaines.

La commission chargée des questions économiques et sociales, pour sa part, est parvenue à une large mesure d'accord sur les questions qui relèvent de son mandat. Pour mieux s'acquitter de sa tâche, elle a recouru aux précieu conseils de divers organismes internationaux et régionaux. Outre les activité prévues à son programme, la commission a tenu des réunions spéciales a cours desquelles elle a entendu les avis des représentants du Haut Commis sariat des Nations Unies pour les réfugiés, de l'Organisation internationale du Travail, de l'Organisation panaméricaine de la santé, du Secrétariat permanent du traité général d'intégration économique de l'Amérique centrale, du Comité d'action pour l'appui au développement économique et social de l'Amérique centrale, de la Banque centraméricaine d'intégration économique, de la Commission économique pour l'Amérique latine et du Programme des Nations Unies pour le développement. Elle a formulé des recommandations précises au sujet de l'intégration, du commerce intrazonal et de la coopération technique, des investissements et du financement, des questions syndicales et des problèmes de santé. Elle a examiné, en lui accordant toute l'importance qu'elle mérite, la situation des réfugiés, et, à cet égard, les pays ont présenté diverses initiatives qui seront examinées en vue d'assurer un règlement conjoint de ce problème.

Les ministres des relations extérieures ont souligné que les travaux des commissions avaient contribué de façon extrêmement positive au processus de négociation politique et diplomatique. Ils se sont félicités des travaux réalisés par les représentants et se sont déclarés satisfaits des progrès réalisés. La tâche qui a été accomplie a permis d'identifier les domaines dans lesquels il convient de déployer le plus d'efforts pour surmonter les divergences mais, par-dessus tout, pour adopter une position d'ensemble qui permette de faire face aux problèmes graves et complexes de tous ordres auxquels l'Amérique centrale est aujourd'hui confrontée.

Après un échange de vues préliminaire, chacun des ministres a proposé de procéder à un examen minutieux des documents établis par le groupe technique et les commissions de travail. Afin de faciliter la phase suivante des opérations et de permettre au groupe de Contadora de s'acquitter de ses fonctions de conciliation, les ministres des relations extérieures ont décidé qu'il convenait d'ordonner systématiquement et de regrouper les documents établis par les commissions afin de les présenter prochainement aux gouvernements d'Amérique centrale pour qu'ils les examinent. Ils ont également décidé qu'une fois qu'il aura achevé sa tâche de compilation systématique et de regroupement, le groupe technique examinera les recommandations et accords, proposera des formules de consensus, complétera l'ordre du jour et élaborera les projets d'instruments politiques et juridiques voulus pour donner forme aux accords intervenus et pour établir les mécanismes nécessaires à leur mise en œuvre.

Les ministres ont néanmoins souligné que les progrès réalisés au sein du groupe contrastaient avec l'intensification de la violence, la recrudescence des activités militaires, la course aux armements et la présence militaire étrangère dans la zone, phénomènes qui, sous leur forme la plus récente, constituent une grave menace pour la paix et suscitent une inquiétude justifiée au sein de la communauté internationale. C'est pourquoi ils ont exprimé la détermination de leurs gouvernements d'intensifier les efforts visant à empêcher la généralisation du conflit et à faciliter le dialogue et la négociation. Ils ont réaffirmé leur volonté inébranlable d'assurer un règlement pacifique des problèmes régionaux tout en exhortant une fois de plus les pays qui ont des liens avec la région ou qui y possèdent des intérêts à contribuer activement aux efforts visant à y instaurer la détente, la paix et une coopération authentique.

Pour leur part, les ministres des relations extérieures des pays d'Amérique centrale ont réaffirmé leur conviction que le processus de négociation engagé par le groupe de Contadora constituait la meilleure formule et le moyen le plus approprié pour résoudre les conflits que connaît actuellement la région.

Il est par conséquent indispensable que les Etats d'Amérique centrale poursuivent leurs efforts en vue de parvenir à une solution négociée de la crise qui sévit dans la région au moyen de négociations politiques et diplomatiques menées dans un esprit de sérieux et de sincérité, en s'attachant à maintenir leur volonté d'entente et de concertation et en respectant les procédures et moyens de négociation qu'ils ont eux-mêmes convenus, afin d'aboutir à la conclusion d'un traité de paix régional.

Pour que ces négociations soient couronnées de succès, il est indispensable de procéder sans tarder au renforcement d'un régime institutionnel qui garantisse, à l'intérieur des Etats, la liberté, la justice, la démocratie et le progrès social et que la promotion et le maintien des relations entre les pays d'Amérique centrale se fassent dans le respect des principes du droit international qui régissent le comportement des Etats.

Annex 19

NOTE FROM THE CONTADORA GROUP TO THE PERMANENT COUNCIL OF THE ORGANIZATION OF AMERICAN STATES, ENCLOSING FOR DISTRIBUTION THE SECOND VERSION OF THE "CONTADORA ACT FOR PEACE AND CO-OPERATION IN CENTRAL AMERICA" OF 7 SEPTEMBER 1984, OEA/SER.G/CP/INF. 2222/84, 24 OCTOBER 1984

(Translation)

24 October 1984.

Her Excellency Monica Madariaga,
President of the Permanent Counsel
of the Organization of American States,
Washington, D.C.

Your Excellency

In compliance with the instructions of our Ministries, we are sending to Your Excellency a copy of the "Contadora Act for Peace and Co-operation in Central America" with the request that you make it known to the missions of the member States.

We take advantage of the opportunity to reiterate to Your Excellency the assurance of our highest and most distinguished consideration.

(Signed by representatives of Mexico, Colombia, Panama and Venezuela.)

[Text of Act not submitted by Honduras; see Counter-Memorial of Nicaragua, Ann. 24]

Annex 20

DECLARATION OF THE FOREIGN MINISTERS OF THE CONTADORA GROUP AT THE CLOSE OF THE MEETING OF 8 AND 9 JANUARY 1985

OEA/Ser.G
CP/INF. 2241/85
11 January 1985
Original: Spanish.

Panama, January 9, 1985

D.V.M. No. 013

Excellency:

We have the honor to transcribe below the text of the "Declaration of the Foreign Ministers of the Contadora Group", issued at the close of our meeting of January 8 and 9, 1985. In this document, we have made an analysis of the two years during which we carried out our peace initiative, in the search for a negotiated solution to the crisis in the Central American region, and we have presented some guidelines or suggestions for immediate action to continue progressing toward a definitive agreement.

We are certain that in the steps we are taking toward that goal and objective we shall continue to have the decided support of that Organization, as well as the valuable backing and contributions that we have always received from you.

Accept, Excellency, the renewed assurances of our highest consideration.

Augusto RAMIREZ OCAMPO,
Minister of Foreign Affairs of Colombia.

Bernardo SEPULVEDA AMOR,
Secretary of Foreign Affairs of Mexico.

Fernando CARDOZE FABREGA,
Minister of Foreign Affairs of Panama.

Isidro MORALES PAUL,
Minister of Foreign Affairs of Venezuela.

Declaration of the Foreign Ministers of the Contadora Group Meeting of January 8 and 9, 1985

At the beginning of 1983, there was the threat that widespread hostilities would be unleashed in Central America.

In the light of this situation, the Governments of Colombia, Mexico, Panama and Venezuela decided to join forces in an effort to promote the peaceful settlement of Central American disputes, on the basis of conciliation and recognition of the legitimate interests of all the States involved, and in order to preserve the full force of the principles of nonintervention and free determination of the Central American peoples.

Since then, the governments of the Contadora Group underscored the socioeconomic roots of the Central American crisis and expressed their grave concern in regard to foreign military intervention in the area and the risk of placing this conflict within the context of an East-West confrontation.

The process initiated by the Contadora Group has attained the following objectives, among others, which are also its most important achievements:

1. It established a regional political mechanism that encouraged a plan for dialogue and negotiation among the Governments of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua.
2. It identified the problems confronting the Central American nations and drew up an agenda of the main topics of dispute.
3. It encouraged specific commitments among the Central American governments, embodied in the "Document on Objectives" and in the standards for the implementation of these commitments.
4. It coordinated a broad effort of consultation and negotiation among those governments, culminating in the preparation of the "Contadora Act for Peace and Co-operation in Central America", a legal instrument to foster the peaceful coexistence and the just and stable development to which the peoples of the region are entitled.
5. It aroused international awareness of the Central American crisis and the support of the community of nations for a peaceful settlement, with the Contadora Group as the feasible instrument to attain that end.

The Contadora Group urges the Governments of the United States and Nicaragua to step up the dialogue they have been holding in Manzanillo, in an effort to reach agreements that will work towards a normalization of their relations and regional détente. Moreover, it is also recognized that it is appropriate to broaden the dialogue between the Government of El Salvador and the FDR-FMLN, as a means to ending the conflict that disrupts that nation and paving the way towards national reconciliation.

Some Central American governments have made observations on the draft Act for Peace and Co-operation. The Contadora Group has compiled those that lend themselves to making the document more precise, and it will propose some formulas to reconcile differing positions still remaining to be settled.

As of this date, the Contadora Group reiterates its determination to continue to work towards the attainment of a definitive agreement among the governments of Central America to establish the bases for a system of mutually respectful regional coexistence — a system that favours sustained economic and social development and the strengthening of democratic and pluralistic institutions.

The Contadora Group notes with satisfaction that the schedule set last September 7, upon presentation of the draft Contadora Act, has been fully met, and that since the technical discussions and observations on the Act have been completed within the period established and following intensive bilateral consultation, the stage of political negotiations has now been initiated.

Therefore, *the Contadora Group invites the governments of the countries of Central America to a meeting of plenipotentiaries on February 14 and 15, 1985, for the purpose of agreeing upon the mechanisms, for verification and control* *and other matters pending for the signing of the Contadora Act.* This meeting would prepare the material for a conference convoked to sign the Act on Peace and Co-operation in Central America.

The Foreign Ministers of the Contadora Group will immediately inform their Central American counterparts of the terms of this declaration. At the same time, they express their satisfaction at having had the opportunity to meet with the President of Panama, Nicolás Ardito Barletta, who reiterated the categorical support of his Government for the peace-making efforts of the Contadora Group.

Panama, January 9, 1985.

Annex 21

REPORT OF THE SECRETARY-GENERAL OF THE UNITED NATIONS, TOGETHER WITH THE COVER OF ANNEX V CONCERNING THE THIRD VERSION OF THE "CONTADORA ACT FOR PEACE AND CO-OPERATION IN CENTRAL AMERICA" (UNITED NATIONS DOCUMENT A/40/737, S/17549), 9 OCTOBER 1985

1. This report is submitted in accordance with Security Council resolutions 530 (1983) of 19 May 1983 and 562 (1985) of 10 May 1985.

2. Since my most recent report dated 15 December 1984 (A/39/827-S/16865), I have endeavoured to maintain contact with the Governments of the countries constituting the Contadora Group, as well as with the Governments of the five Central American countries and of other countries with interests in the region. The volatility of the situation in Central America and the magnitude of the problems with which the Contadora Group has had to deal have obviously so far hindered the dispatch of a comprehensive report on the Group's activities and this in turn has prevented me from reporting to the Council for almost one year. The notes circulated as Security Council and General Assembly documents at the request of the countries in the Contadora Group or of the Central American countries bear witness to the fluidity of the process.

3. On 26 September, I received a visit in my office from the Ministers for Foreign Affairs of Colombia, Mexico, Panama and Venezuela who, in addition to reporting orally on their activities, delivered to me a letter enclosing the Final Draft of the Contadora Act on Peace and Co-operation in Central America. The Ministers also delivered to me an explanatory document concerning the Final Draft as well as other relevant material, much of which has already been circulated as official documents of the Security Council and of the General Assembly[1]. The Final Draft, as well as the letter of submission from the four Ministers, the explanatory document and the other material not previously circulated, are attached as annexes to this report.

4. The Contadora Foreign Ministers told me that the Final Draft was delivered to their Central American counterparts during a joint meeting held in Cartagena, Colombia, on 12 and 13 September. They stated that the new draft incorporates some of the comments made by some Central American Governments regarding the original draft of September 1984, as well as some proposals which the Contadora Group consider to be fair and viable compromises concerning the most controversial issues. The Ministers also informed me that the plenipotentiaries of the nine countries would be meeting in Panama, starting on 7 October 1985, to discuss for a period not exceeding 45 days the unresolved aspects of the Act relating to the following headings: *(a)* control and reduction of armaments; *(b)* implementation and follow-up mechanisms with regard to security and political matters; and *(c)* military manœuvres. At the end of that period, the Contadora Group would convene a joint conference of Ministers for Foreign Affairs in order to proceed to the signing of the Act. The Ministers drew my attention to the fact that agreement was reached at the Cartagena

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[1] The list of the documents already circulated, giving their respective symbols, is contained in Annex I of this report.

meeting to the effect that incidents or developments in the region would not be matters to be dealt with by the plenipotentiaries and would not affect the holding of the meetings or the completion of the work. They also mentioned the urgent need for countries with interests and ties in the region to avoid any political or military action that might hamper the negotiating process.

5. At its thirty-ninth session, the General Assembly adopted by consensus resolution 39/4 on the situation in Central America. Subsequently, on numerous occasions, further evidence has been provided of the broad support of the international community for the efforts of the Contadora Group. For my part, I should like to take this opportunity to express once again my deep admiration to the Governments of the Contadora Group for their persistent efforts to find a negotiated and comprehensive solution to the serious crisis facing Central America. Thanks to their unceasing work, it has so far been possible to avoid an explosion in the region. I also wish to express my satisfaction at the creation by the Governments of Argentina, Brazil, Peru and Uruguay of a Contadora Support Group. I am convinced that the formation of this Group, which reflects strong Latin American concern, will serve not only to support but also to strengthen the political action of Contadora.

6. By the same token, I welcome the decision to hold in Luxembourg next November a second meeting between the Ministers for Foreign Affairs of the States members of the European Community, including Portugal and Spain, and their counterparts from the five Central American States and from the Contadora Group. The serious economic situation in which the Central American countries now find themselves makes it imperative to formulate a co-ordinated plan of assistance.

7. Early in May, the Government of Nicaragua requested an urgent meeting of the Security Council to discuss the situation created by the trade embargo imposed on Nicaragua by the United States of America on 1 May. After a lengthy debate, the Council adopted resolution 562 (1985), in which, *inter alia*, it affirmed the inalienable right of Nicaragua and the rest of the States to decide on their own political and economic systems free from outside interference, subversion, direct or indirect coercion or threats of any kind; reaffirmed its firm support to the Contadora Group; called on all States to refrain from carrying out political, economic or military actions of any kind against any State in the region which might impede the peace objectives of the Contadora Group; called on the Governments of the United States and Nicaragua to resume the dialogue in Manzanillo, Mexico; and requested the Secretary-General to keep the Council apprised of the development of the situation and the implementation of the resolution.

8. I must admit that despite the efforts of the Contadora Group, the situation in Central America has been steadily deteriorating this year. Specifically, there has been an increase in bilateral incidents between countries in the region. In addition to hindering the work of the Contadora Group, such incidents have at certain times prompted fears of a more serious breach of the peace. Particularly disturbing in this connection is the tension between Nicaragua and Costa Rica, in addition to the already delicate situation in the border area between Honduras and Nicaragua. The Security Council and the General Assembly have before them a number of communications giving details of border incidents, threats, instances of foreign intervention and the continuing presence of military forces from outside the region. I cannot help but deplore such developments, especially those involving the loss of human life.

9. In El Salvador, although legislative elections were held in March, the armed conflict goes on, with an increase in bombings and an outbreak of

kidnappings, while the talks between the Government and the Frente Democrático Revolucionario-Frente Farabundo Martí para la Liberación Nacional (FDR-FMLN) remain stalled.

10. At the same time, despite the Security Council's appeal, the Manzanillo talks between the United States and Nicaragua are still suspended, and as of now there is no sign of their being resumed.

11. As I have had occasion to state in the past, the roots of the Central American crisis are to be found in unjust socio-economic structures and domestic policies; it is thus obvious that the solution to the crisis is contingent on the political will of the States in the region. Concurrently with the Contadora Group's search for a comprehensive solution, any border incidents that arise should be dealt with directly by the parties. It is imperative for the countries with interests in the region to support with deeds the Contadora Group's efforts and refrain from any action that might adversely affect them. The continuing deterioration in the situation over the past year demonstrates the urgent need for an equitable, comprehensive and negotiated solution in the region. In renewing my appeal to the countries of the region to persevere in their efforts, I would like to reiterate that I am always ready to make whatever contribution might assist in furthering the peace process in Central America.

Annex V

Contadora Act on Peace and Co-operation in Central America

[Text not submitted]

Annex 22

LETTER FROM THE PRESIDENT OF NICARAGUA TO THE PRESIDENTS OF THE COUNTRIES OF THE CONTADORA GROUP AND THE SUPPORT GROUP (UNITED NATIONS DOCUMENT A/40/894, S/17634, ANNEX), 11 NOVEMBER 1985

Letter Dated 13 November 1985 from the Permanent Representative of Nicaragua to the United Nations Addressed to the Secretary-General

I have the honour to transmit to you the note of 11 November 1985 from H.E. Daniel Ortega Saavedra, President of the Republic of Nicaragua, addressed to the Presidents of Colombia, Mexico, Panama and Venezuela, the countries that make up what is referred to as the Contadora Group.

I should be grateful if you would circulate this note and its annex as an official document of the General Assembly, under agenda item 21, and of the Security Council.

(Signed) Javier CHAMORRA MORA,
Ambassador,
Permanent Representative of Nicaragua
to the United Nations.

Annex

Letter Dated 11 November 1985 from the President of Nicaragua Addressed to the Presidents of the Countries of the Contadora Group and the Support Group

The peoples of Latin America and the Caribbean have felt that they were represented in the peace initiative that Mexico, Panama, Venezuela and Colombia have been promoting for two years and 10 months and in which those countries have been joined by Brazil, Argentina, Peru and Uruguay.

Now, more than ever, the vision of Bolivar, Hildago, Marti and Sandino of a Latin America united in the defence of self-determination, independence and peace calls for a sense of honour on the part of Latin American leaders.

Peace, stability and democracy are being jeopardized by those who are endeavouring to maintain an unjust international economic order that is threatening to bring about economic contraction as a result of external debt and inequitable foreign trade.

Peace, stability and democracy are jeopardized when peoples such as the people of Nicaragua, who have gained independence, are the victims of a policy of State terrorism pursued by a government that is endeavouring to undermine the Nicaraguan revolution.

An endeavour is being made to undermine the Nicaraguan revolution because the leaders of the United States consider it a "bad example" for the peoples and governments of Latin America and the Caribbean, which are facing, at this moment in history, a great struggle to bring about a new kind of political and economic relations, particularly with the United States, relations that must be just, equitable and respectful.

The leaders of the United States are endeavouring to destroy the democratic process in Nicaragua in order to disorganize and demoralize people, political parties and governments in Latin America and the Caribbean that, in a pluralist framework, are increasingly in agreement on the concerted action required in order to ensure the progress of democracy and social justice, which are threatened by the intransigent policies of the United States Government.

With the same brutality with which they crushed the people of Maurice Bishop, the leaders of the United States would like to crush not only the Nicaraguan revolution but also expressions of independence and self-determination on the part of honourable leaders in Latin America and the Caribbean; hence the policy of blackmail and threats that is characteristic of the current United States Government.

The Nicaraguan revolution, which for over four years has felt the direct impact of the policy of State terrorism pursued by the United States, has supported the pacification endeavour of the Contadora Group, which, from a Latin American viewpoint, has been defending the option of the peaceful settlement of disputes.

In observance of that principle, which is laid down in the Charter of the United Nations, Nicaragua has not only supported the endeavours of the Contadora Group, but has also made use of the machinery for the settlement of disputes between States established under international law. It is for that reason that we requested that the Security Council of the United Nations should be convened and that we submitted the matter of the acts of aggression committed by the United States against Nicaragua to the International Court of Justice.

Evaluating the peace initiative of the Contadora Group and the contempt with which the United States Government has treated the Group's noble efforts to bring peace to the region, I am writing to you today to transmit the document containing the official position of the Government of Nicaragua on the latest draft Act on Peace and Co-operation in Central America submitted by the Ministers for Foreign Affairs of the Contadora Group to the Foreign Ministers of Central America at the joint meeting held at Panama on 12 and 13 September 1985.

Nicaragua's position is the outcome of thorough consideration and study of the new draft Act. In evaluating the Act, we have borne in mind above all the critical circumstances prevailing in the area as a result of the intensification of the foreign intervention and aggression suffered by the Nicaraguan people at the hands of the United States Government, as well as the September 1983 Document of Objectives adopted by the Heads of State of the Central American area and the revised Contadora Act on Peace and Co-operation in Central America of 7 September 1984.

It has long been Nicaragua's position that any solution to the conflicts in the region necessarily involves reaching an understanding with the United States Government that the latter will first put an end to the brutal war of aggression it has imposed on the Nicaraguan people and undertake solemnly to desist from its policy of war against our nation in the future.

It has also been a position of principle of the Government of Nicaragua, and one linked with the very survival of the Nicaraguan nation, that it must have the necessary means of defence to enable it to safeguard properly the legitimate security interests and inalienable rights to self-determination and independence of the Nicaraguan people, which is threatened by the war of aggression and the dangers of direct military intervention — a possibility which the United States Government refuses to rule out.

In this war situation currently experienced by the country, it would not be possible to enter into commitments concerning the reduction and monitoring of weapons as long as the basic minimum conditions did not exist which would guarantee Nicaragua's security. Such conditions would exist only if the United States Government were to enter into genuine, specific and effective commitments which enabled Nicaragua to accept a level of military development which did not place its national security at risk.

In the present circumstances, not only has the aggression against Nicaragua in all spheres not declined, but the threats and attacks on our national sovereignty and independence are intensifying steadily and the possibilities of reaching an understanding with the United States are becoming increasingly remote as a result of that country's intransigence.

Nor will conditions of peace and security exist as long as the United States military presence persists in the region as a threat to my country's security. Accordingly, and in conformity with the Document of Objectives and the revised Act of 7 September 1984, Nicaragua advocates a complete ban on the international military manœuvres which have constituted intimidating and threatening actions against Nicaragua, as well as a form of intervention and interference which must cease.

Despite the valuable peace efforts of the nations of the Contadora Group and the Support Group, new elements of tension have had an adverse effect on the Central American conflict, thereby exacerbating the crisis and the dangers which threaten Nicaragua and the region.

In this context, the United States Government has actually disbursed the US$27 million approved by the United States Congress for the mercenary forces, thereby escalating the aggression, terror, destruction and genocide against the Nicaraguan people which have taken a toll of over 11,000 Nicaraguans dead, 5,000 wounded, 5,000 kidnapped, 250,000 families displaced and US$1.5 million in direct and indirect losses.

As part of this aggressive policy, the United States Assistant Secretary of Defense, Alfred C. Ikle, stated on 31 October that the United States Government might resort to the direct use of force at some point in the future in order to overthrow the Nicaraguan Government. Such threats show that justice and right are on Nicaragua's side when it invokes the right not to renounce the means which would enable us to defend ourselves against possible United States direct military intervention.

At the same time, the United States Government has stepped up its economic aggression against Nicaragua, renewing the trade blockade and economic sanctions condemned by GATT, on the untenable pretext that the policies and actions of the Government of Nicaragua continue to pose an unusual and special threat to the national security and foreign policy of the United States.

The Intelligence Committees of the House and the Senate recently authorized the CIA to supply sophisticated communications radios to the terrorists who are murdering the people of Nicaragua, while the United States Government continues to reject the mandate and jurisdiction of the International Court of Justice and refuses to comply with international laws.

Furthermore, it should be emphasized that the recent statement by the President of the United States to the session of the General Assembly commemorating the fortieth anniversary of the founding of the United Nations, in which he sought to include the conflicts in Central America and the war of aggression against Nicaragua within the framework of his negotiations with the Soviet Union, constitutes a clear demonstration of contempt for the search for peace for the region which has been promoted by the Contadora Group on behalf of Latin America, and confirms the lack of political will on the part of the United States Government to assume its central responsibility, desisting from its policy of intervention and aggression that is the direct cause of the accelerating aggravation of existing conflicts, which originated in the age-old poverty and oppression of millions of Central Americans.

The most recent example of this lack of political will on the part of the United States Government to bring its conduct into line with the norms of international law and find reasonable and honourable ways of reaching an understanding with Nicaragua was the United States proposal to demand the dissolution of our National Assembly, elected in free and honest elections, and "national reconciliation" with the terrorist forces that the United States Government has created and led, as conditions for beginning a dialogue with Nicaragua.

In these circumstances, the adoption of commitments regarding military development, at a time when the aggression against Nicaragua is persisting and becoming more serious, cannot lead to the establishment of a genuine, honourable and just peace, which can be achieved only through respect for the inalienable rights of all nations, including the right to preserve sovereignty, independence and territorial integrity.

Lastly, I wish to reaffirm what I said during my address to the General Assembly session commemorating the fortieth anniversary of the United Nations, to the effect that "no solution or document will be effective in Central America until the United States rulers totally cease to attack the people of Nicaragua, directly or indirectly, in a covert manner or by any other means".

Similarly, I wish to reaffirm the position of Nicaragua, which is also a common aspiration of all the peoples of Latin America, namely that in order to deactivate the factors of tension and conflict it is necessary to put an end to the foreign military presence in the area, for we believe it is of fundamental importance that Central America should constitute a zone of peace, free from any foreign military presence, in accordance with the Document of Objectives and the revised Contadora Act of 7 September 1984.

In reaffirming the resolute and sincere desire for peace and understanding that has characterized its participation in the Contadora negotiating process, the Government of Nicaragua expresses its confidence that the position of Nicaragua with regard to the new Draft Act will be subjected to a detailed and careful examination that will give rise to initiatives which will make it possible to advance on firm foundations towards the peace that the peoples of Central America quite rightly demand.

The peoples of Central America demand this right to peace; they demand respect for the self-determination, sovereignty and independence of the peoples of the world; they demand the right to life; they demand respect for the principles of the Charter of the United Nations and the international legal order, for Latin America and the Caribbean, and for the peoples of the world who have supported the cause of Nicaragua. The heroic people of Sandino will continue resisting with the courage, guns, and moral force of men and women determined to repel the brutal and immoral aggression that the policy of State terrorism pursued by the United States Government has unleashed against our people.

The people of Nicaragua will continue to defend with their blood the right to peace and justice, in the conviction that reason and wisdom must prevail over the politics of force and that peace will become a reality in Central America.

Appendix

Position of the Government of Nicaragua with Regard to the New Draft Contadora Act of 12 September 1985

I. Having analysed in detail the Draft Act of 12 September 1985, we wish to emphasize that the Government of Nicaragua considers the following parts of the draft to be acceptable, despite the fact that in some cases, Nicaragua once again yields its position in the greater interests of Central American peace and harmony:

1. PREAMBLE.
2. GENERAL COMMITMENTS.
3. COMMITMENTS WITH REGARD TO REGIONAL DETENTE AND CONFIDENCE-BUILDING.
4. COMMITMENTS WITH REGARD TO NATIONAL RECONCILIATION.

In this section, Nicaragua wishes to stress that, although our suggestions with regard to national reconciliation were not incorporated, the concept of these commitments, presented in the text as to be assumed by countries vis-à-vis their own peoples, maintains their internal nature and hence the sacred principle of non-interference in matters within domestic jurisdictions.

5. COMMITMENTS WITH REGARD TO HUMAN RIGHTS.
6. COMMITMENTS WITH REGARD TO ELECTORAL PROCESSES AND PARLIAMENTARY CO-OPERATION.
7. COMMITMENTS WITH REGARD TO FOREIGN MILITARY BASES, SCHOOLS AND INSTALLATIONS.

These commitments should be completed by an appendix which provides that the parties shall agree to repeal current legal provisions which allow foreign elements to participate in or have free access to their military schools, bases and installations.

8. COMMITMENT WITH REGARD TO THE TRAFFIC IN ARMS.
9. COMMITMENTS WITH REGARD TO TERRORISM, SUBVERSION OR SABOTAGE AND THE PROHIBITION OF SUPPORT FOR IRREGULAR FORCES.

The commitments in these areas, given their nature of commitments under international law, should be implemented before the signing of the Act, in order to create the minimum basic conditions of security to enable Nicaragua to assume commitments with regard to military development. At the signing of the Act, these commitments must have been already complied with in their totality, not only because they are commitments under international law, but because the signing of the Act constitutes a ratification of existing commitments to respect these obligations.

10. COMMITMENTS WITH REGARD TO DIRECT COMMUNICATIONS SYSTEMS.
11. COMMITMENTS WITH REGARD TO ECONOMIC AND SOCIAL MATTERS.
12. COMMITMENTS WITH REGARD TO REFUGEES.
13. COMMITMENTS WITH REGARD TO EXECUTION AND FOLLOW-UP IN GENERAL.

We do not, however, consider it acceptable that new functions should be assigned to the *Ad Hoc* Committee for the Evaluation and Follow-up of Commitments concerning Political and Refugee Matters.

14. FINAL PROVISIONS, except for that relating to the entry into force of the Act and questions linked to the time-limits for commitments.
15. ADDITIONAL PROTOCOLS I and IV, which are acceptable in their totality.

With reference to Protocol II, the Government of Nicaragua wishes to reiterate once again that the interventionist and aggressive policy of the United States Government is playing the central role in the Central American crisis. In that sense, it is not possible to find a lasting and stable solution to the prevailing conflicts without engaging the political will of the United States Government in serious and specific obligations, which would halt its illegal conduct.

The Government of Nicaragua notes with concern that Protocol II contains no specific commitments on the part of the United States Government, without which it is impossible effectively to re-establish peace in Central America. In the opinion of Nicaragua, this Protocol should expressly oblige the United States Government to envisage the following obligations:

(a) The cessation of all forms of aggression against Nicaragua and a commitment not to initiate such activities in the future;
(b) The adoption of the commitments with regard to international military manœuvres;
(c) Strict compliance with the order of 10 May 1984 and the decision of the International Court of Justice in the case brought by Nicaragua against the United States.

However, in the opinion of the Government of Nicaragua, the most viable and effective option would be to add a new protocol directed solely at the United States Government, which would include the above-mentioned commitments.

Furthermore, this protocol should be signed by the United States at the same time as it signs the Contadora Act, since otherwise, Nicaragua and the other countries of Central America would be open to United States aggression.

Protocol III should contain a new provision establishing the duty of the States signatories to this Protocol to "provide every assistance for the functioning of the execution and follow-up mechanisms provided for in the Act, when required by the Parties".

II. The Government of Nicaragua has also studied in detail the provisions of the document dated 12 September 1985 relating to commitments with regard to international military manœuvres, commitments with regard to armaments and troop strength, the period of validity of the Act and the machinery for denunciation, and commitments with regard to foreign military advisers. The principal considerations of the Government of Nicaragua with regard to each of these topics, and especially those new provisions which threaten to leave Nicaragua defenceless in the face of the declared aim of the United States Government to destroy the Nicaraguan revolution are set forth below.

1. International Military Manœuvres

The document of 12 September 1985 introduces for the first time the concept of the "regulation" of international military manœuvres, inexplicably going back on what the Act of 7 September 1984 had already set forth as a

Latin American position of principle, namely that the holding of international manœuvres in the region should be prohibited immediately, which was why the prohibition of manœuvres and the freeze on the procurement of weapons were to take place simultaneously. In the new September 1985 document, the prohibition is postponed to subsequent stages, whereas an immediate freeze on the procurement of weapons is imposed, simultaneously only with the "regulation" of manœuvres.

It is true that, if Nicaragua agreed to the terms of the document of 12 September 1985 in this regard, it could take advantage of the prerogatives of that provision to hold military manœuvres in its own territory, within the limits established therein, with one or more of the military forces of friendly States which have offered weapons or military advisers to the Nicaraguan armed forces. However, Nicaragua is fully aware that this would not contribute to peace in Central America and in Latin America, and might even exacerbate the already difficult international situation.

In the opinion of the Government of Nicaragua, the absolute, immediate and categorical prohibition of international military manœuvres, regardless of their type, is an irrevocable position of principle. This Nicaraguan position is entirely consistent with not only the revised Contadora Act of 7 September 1984 and the preamble of the new Act but also the Document of Objectives of September 1983.

The need to prohibit the holding of international military manœuvres in absolute terms is all the more obvious in view of the fact that whenever the United States Government has held military manœuvres in Honduras, it has said that they were a means of warning and applying pressure on Nicaragua, which confirms their use as an instrument of intimidation.

In addition, the military manœuvres, from an objective point of view, are the preparatory stages for real concrete acts of aggression against Nicaragua in the future.

In this regard, a peace agreement for the region should provide for the absolute prohibition of international military manœuvres and complete the provisions relating to those commitments in order to ensure their implementation. Nicaragua considers it essential to incororate the following complementary aspects in the Act in order to avoid having omissions or gaps in the text that might vitiate the commitments made:

International military manœuvres must be prohibited simultaneously with and at the very moment at which the freeze or moratorium on the procurement of weapons occurs;

It must be expressly prohibited for a State located outside the area to hold unilateral international military manœuvres, exclusively with its own troops, in the territory of one or more Central American States.

2. *Commitments with Regard to Armaments and Troop Strength*

The Government of Nicaragua has been maintaining as a position of principle that the topic of military development is directly linked to the national security needs of each State and to strict compliance with the basic principles of international law. This relationship is all the more evident in the case of Nicaragua, which has been facing a brutal war of aggression waged by the United States Government for more than four years.

Nicaragua considers that any regional agreement implies the normalization of relations between Nicaragua and the United States of America, in other words, an end to the aggressive policy of the United States against Nicaragua.

In this regard, Nicaragua considers that minimum basic conditions of security should be established so that Nicaragua may assume commitments with regard to the control and reduction of weapons and troops. These minimum conditions are the following:

An end to United States aggression against Nicaragua in all its forms, including both official aid and covert aid to mercenary forces through private organizations and private citizens, and a solemn commitment by the United States Government to refrain from promoting or allowing similar acts in the future;

When all types of support to mercenary forces cease, the threat posed by those forces to Nicaragua will disappear, and minimum conditions of security will be established, thus enabling commitments to be assumed with regard to armaments and troop strength.

The above-mentioned premises, in addition to being an obligation under international law, constitute a direct and specific obligation under the order of 10 May 1984 of the International Court of Justice instructing the United States to respect Nicaragua's right to sovereignty and political independence, which should not be jeopardized by military and paramilitary activities promoted from outside the country.

On the same topic of armaments, the Government of Nicaragua makes the following additional comments:

The Government of Nicaragua has noted with concern that the document of 12 September 1985 changes the provisions of the revised Act of September 1984 concerning the moratorium on the procurement of weapons. The new document not only reduces the period of time of the moratorium or freeze on weapons, set for 30 days from the signing of the Act, thus imposing the immediate entry into force of the provision, but also extends the moratorium to troop strength, which is not only an innovation but also a concession. For Nicaragua, this position in addition to contributing to an imbalance in the commitments already made, is clearly unacceptable because the total elimination of irregular forces does not occur simultaneously with the signing of the Act. Certainly, such a provision seriously endangers Nicaragua's national security as long as there are armed groups receiving support from outside the country;

Moreover, Section 22 *(c)* of the revised Act of September 1984, in considering the "levels of military development of the Central American States, in accordance with the requirements of stability and security in the region", established, among the elements to be taken into account, in subparagraph 8, "Geographical features and position, and geopolitical situation". Efforts to "refine" the text have resulted in the disappearance of that formula, and in turn, the disappearance of subparagraph 8 makes it impossible to conduct an accurate evaluation of the Nicaraguan problem in not only a Central American but also a broader context.

Understandably, Nicaragua considers its military security problems to be not only the result of tensions in its relations with some of the Central American countries, but also fundamentally linked with the attitude of the Government of the United States, one of the world's two major military Powers which, through its President, Ronald Reagan, has reiterated publicly its determination not to tolerate the existence in Nicaragua of the legal-political régime of the Sandinist revolution.

Nicaragua is naturally concerned at the participation of Central American countries, under United States influence, in military arrangements ostensibly directed against the Nicaraguan revolution. For this reason, the laying of a groundwork for agreement which would rule out the possibility of military confrontation between Nicaragua and its most immediate neighbours is of undeniable importance. Of course, Nicaragua aspires to a reasonable balance which would guarantee its security not only against possible action by any one of its neighbours but also against possible joint action by several of them against Nicaragua, as has been the case recently. However, while important, the above conditions are not enough in themselves. Nicaragua considers that the level of weaponry necessary to defend its sovereignty is determined by its capacity to resist a United States aggression, an option which the United States Government systematically refuses to rule out.

Until the United States Government publicly, clearly and honourably makes an international commitment not to invade Nicaragua militarily, either directly or indirectly, the Nicaraguan people has the right to guarantee itself a level of armaments and military and paramilitary troops which would enable it to defend its sovereignty with dignity and to acquire the minimum deterrent capacity to make its potential aggressors think seriously about the high costs of such a venture.

Consequently, Nicaragua's defence capability must continue to be considered in the light of the same geographical and geopolitical factors which rightly appeared in the Contadora Act of September 1984.

Moreover, in respect of the criterion of gross domestic products (GDP), which the Act cites as a factor to be taken into account in establishing maximum limits for weapons and troops, Nicaragua believes that, in its case, this criterion should be given special consideration since Nicaragua's gross domestic product is at present adversely affected and drastically reduced as a result of the economic, financial and military war being waged by the United States Government, which has seriously affected the country's production levels.

Although Chapter III, Section 2: "Commitments with regard to Armaments and Troop Strength" of the Act of 7 September 1984 establishes a timetable for the conclusion of agreements on types of weapons and limits for troops and military installations, agreement on these problems remains entirely subject to acceptance by all the negotiating parties. Nowhere in the Act is there any attempt to impose on any of the Central American countries involved in the negotiation a level of weapons or troops which that country is not prepared to agree to of its own sovereign will.

To try to demand of a State that it renounce its sovereign and inalienable rights is incompatible with international law and the Charters of the United Nations and the Organization of American States, as well as with the very principles set forth in the Act.

In Nicaragua's opinion, the novel provision contained in the Act concerning the provisional application of the maximum limits and timetables for weapons and troops which the Verification and Control Commission (VCC) shall set if the parties are unable to reach an agreement, is an unacceptable mechanism since it seeks to replace the political will of the parties, without which no agreement is possible. The imposition of such a measure clearly damages sovereign principles inherent to States. Moreover, such a provision could predispose those States which might stand to benefit from the Commission's studies to block an agreement in order to benefit from this system. It is thus clear that, if one or more parties simply chose to block those agreements, any one of the parties might be forced to accept indefinitely the level proposed by the VCC.

Moreover, a country which, like Nicaragua, is the victim of a brutal war of aggression, cannot be subjected to the establishment of maximum limits on weapons and troops to which it has not consented freely, since that would be tantamount to leaving a nation defenceless, while the threats to its sovereignty and independence persisted.

In this same order of ideas, the 10 May 1984 order of the International Court of Justice, to which Nicaragua had turned to demand respect for its inalienable rights, confirms that it would be impossible for our country to agree to the imposition of limits on weapons and troops which it had not accepted of its own sovereign will.

The order directly instructed the United States Government to cease immediately its military and paramilitary activities against Nicaragua, in particular the blocking of Nicaraguan ports and the laying of mines which, as was publicly acknowledged, had been planned and carried out directly by the Central Intelligence Agency (CIA) itself. This clear and categorical recognition by the International Court of Justice itself of the aggression against Nicaragua reaffirms the need for the United States to halt its aggression and make a solemn commitment not to engage in further aggression in the future, if Nicaragua is to be able to enter into commitments with regard to the control and reduction of weapons.

This recognition also demonstrates once again the need to understand clearly that any solution to the problems of Central America necessarily involves taking into account geopolitical factors linked to the attitude of the United States towards Nicaragua and the other countries of the region.

In Nicaragua's opinion, the establishment of maximum limits for weapons and troops must, in addition to commitments with regard to security matters and the prohibition of support for irregular forces, be accompanied also by a new provision of the Act which would prohibit the Central American countries from allowing their territory to be used by foreign troops, a practice which, unless it is prohibited expressly, would affect the concept of reasonable balance of forces since the weapons and numbers of such foreign troops could increase the level of military development of the country which harboured them.

3. Foreign Military Advisers

In conformity with the Document of Objectives, Nicaragua has, throughout the negotiating process, maintained that all military advisers must be withdrawn, without distinction. Nicaragua considers the prohibition of foreign military presence, including the immediate withdrawal of all military advisers — even those performing technical functions related to the installation and maintenance of military equipment — to be fundamental to peace and stability in the Central American region.

Furthermore, the 12 September 1985 document introduces a new and totally unacceptable variant relating to the concept of "foreign elements likely to participate in military, paramilitary and security activities", an extremely vague and imprecise concept which lends itself to obvious confusions and contradictions.

The introduction of this addition is not at all fortuitous. It is a further consequence of the "refinements" made to the Act by some Central American governments. If we read Article 27 of the so-called "Tegucigalpa Document" drawn up on 20 October 1984, with which the Central American countries began the campaign of "refinement" which they are now seeking to take to these unacceptable limits, we find precisely that definition. Nicaragua considers the meaning of the definition to be extremely broad and ambiguous, since it is clear that any civilian worker, doctor, engineer or teacher, man or woman, who is not physically disabled, can be included under the description "likely to participate in military activities".

This concept also contradicts the Act itself, since it is patently obvious that persons "likely" to participate in military, paramilitary and security activities are precisely those advisers who perform technical functions related to the installation and maintenance of military equipment, with the result that, to be consistent, such personnel would also have to be required to withdraw immediately.

4. Duration of the Period of Validity of the Act, and Denunciation Procedures

The final provisions of the new document establish that "Five years after the entry into force of this Act, the States parties and the Contadora Group shall meet to evaluate it and to take whatever steps they deem necessary". Likewise, the new Act, which is described as a legal instrument, does not establish a system of denunciation.

It does not strike us as very reasonable that a legal instrument which envisages very specific commitments should remain in force indefinitely and should envisage for its evaluation and revision a legal mechanism requiring unanimity of the parties.

The Government of Nicaragua considers that a precise period must be established for the validity of the Act. To this end, it proposes that the Act should have a reasonable period of validity of five years, which could be extended if all the parties so desired.

Furthermore, account must be taken of the fact that the 12 September document does not envisage a system for denunciation of the Act, although international legal instruments usually contain such a clause. Such a provision is all the more necessary since any failure by the United States or any Central American country to fulfil its commitments would leave unprotected the national security interests of the countries affected by such a failure.

Finally, Nicaragua values greatly the laudable efforts made by the Contadora Group to reach an agreement which would restore peace and security to the Central American region. Nicaragua is also confident that the Contadora Group and the nations of the so-called Lima Group will at the same time move ahead in an effort directed at the United States Government, in order to generate on the part of that Government the necessary political will to enable Nicaragua and the other countries of Central America to pursue freely the path chosen by each of our peoples of its own sovereign will, without fear of aggression, interference or foreign intervention. Nicaragua once more reaffirms its determination to continue to co-operate actively in the process leading to the normalization of relations between the United States and Nicaragua and to the signature and entry into force of the Contadora Act and the strict fulfilment of its provisions.

Managua, 8 November 1985.

Daniel ORTEGA SAAVEDRA.

Annex 23

NOTE FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF PANAMA, FORWARDING THE TEXT OF THE COMMUNIQUE ISSUED BY THE CONTADORA GROUP AT THE END OF THE MOST RECENT MEETING OF PLENIPOTENTIARIES, ON 21 NOVEMBER 1985

OEA/Ser.G
GP/INF.2354/85
17 December 1985
Original: Spanish.

PERMANENT MISSION OF PANAMA
ORGANIZATION OF AMERICAN STATES

OEA-837-85
November 27, 1985.

Excellency:

I have the honour to address Your Excellency to forward to you the text of the communiqué issued by the Deputy Foreign Ministers of the Contadora Group at the end of the most recent Meeting of Plenipotentiaries, on November 21, 1985.

In this regard, I request that you be so kind as to have the enclosed document distributed to the distinguished members of the Permanent Council.

Accept, Excellency, renewed assurances of my highest consideration.

(Signed) Roberto LEYTON,
Ambassador,
Permanent Representative of Panama
to the Organization of American States.

His Excellency
Ambassador Richard T. McCormack,
Chairman of the Permanent Council,
Organization of American States,
Washington, D.C.

Upon ending the work sessions with their Central American colleagues, the plenipotentiaries of the Contadora Group issue the following communiqué:

1. Today, November 21, 1985, marks the end of the period of 45 days, agreed upon by the Ministers of Foreign Affairs of the Central American countries and of the countries of the Contadora Group, during their meeting on September 12 and 13, 1985, for the purpose of discussing exclusively the

matters still pending of the Act of Contadora for Peace and Co-operation in Central America, in regard to military manœuvres, control and reduction of weapons, and the mechanisms of execution of and follow-up on the commitments in security and political matters, and such operational aspects as entry of the Act into force, the membership and operation of the mechanisms for execution and follow-up, their budget, and their seat.

2. During the meetings held October 7 through 10 and 17 through 19, the points of view and proposals of the five Central American Governments were gathered. During the course of the present deliberations from November 19 through 21, the plenipotentiary representatives of the Contadora Group presented new proposals to their Central American colleagues, aimed at bringing the various positions closer together in order to make negotiation viable.
3. At this meeting a solution was attained of the matters concerning the mechanisms for execution and follow-up and the final provisions of the Act. New proposals presented by the Contadora Group for the negotiation on military manœuvres and the control and reduction of weapons were also considered.
4. The plenipotentiary representatives of the countries of the Contadora Group will submit a report on the present status of the negotiations to their Ministers of Foreign Affairs, so that the course of diplomatic action and of the process of making peace in the region may be determined. It will likewise convey to them the request by the Central American governments that the negotiations be continued within the Contadora frame until a final agreement is reached.
5. It is advisable to emphasize that the continuation of that process and the attainment of negotiated solutions still require the contribution of the Central American governments, in a clear and categorical way, through the political decision that will enable them to undertake the commitments set forth in the Act.
6. The plenipotentiary representatives of the countries of the Contadora Group once more thank the Government of Panama for its hospitality, which has favored the accomplishment of the work.

Panama City, November 21, 1985.

Annex 24

CARABALLEDA MESSAGE FOR PEACE, SECURITY AND DEMOCRACY IN CENTRAL AMERICA, ISSUED BY THE MINISTERS OF FOREIGN RELATIONS OF THE CONTADORA GROUP AND THE SUPPORT GROUP (UNITED NATIONS DOCUMENT A/40/1075, S/17736, ANNEX), 12 JANUARY 1986

Letter Dated 13 January 1986 from the Permanent Representatives of Argentina, Brazil, Colombia, Mexico, Panama, Peru, Uruguay and Venezuela to the United Nations Addressed to the Secretary-General

We have the honour to enclose a copy of the Declaration issued at the city of Caraballeda, Venezuela, on 12 January by the Ministers for Foreign Affairs of the Contadora Group and of the Support Group, with a request that this note and its annex be circulated to all Member States as an official document of the fortieth session of the General Assembly, under item 21, and of the Security Council.

(Signed) Carlos ALBAN HOLGUIN,
Permanent Representative
of Colombia.

(Signed) Carlos M. MUNIZ,
Permanent Representative
of Argentina.

(Signed) Mario MOYA-PALENCIA,
Permanent Representative
of Mexico.

(Signed) George A. MACIEL,
Permanent Representative
of Brazil.

(Signed) David SAMUDIO, Jr.,
Permanent Representative
of Panama.

(Signed) Carlos ALZAMORA,
Permanent Representative
of Peru.

(Signed) J. F. SUCRE FIGARELLA,
Permanent Representative
of Venezuela.

(Signed) Julio César LUPINACCI,
Permanent Representative
of Uruguay.

Annex

Caraballeda Message for Peace, Security and Democracy in Central America

The Ministers for Foreign Affairs of the Contadora Group and of the Support Group, meeting at Caraballeda on 11 and 12 January 1986, declare that, in the light of the growing threat to peace in Central America and the risk of a diplomatic vacuum that would exacerbate tension in the region, there is an urgent need to give fresh momentum to the process of negotiations sponsored by the Contadora Group. This process must culminate as soon as possible in the signing of the Contadora Act on Peace and Co-operation in Central America, the only way to bring about a general political understanding that would facilitate peaceful and productive coexistence among all the countries of the region on the basis of mutual respect.

The Ministers note that after 36 months of negotiations, there persist attitudes and situations that make it difficult to conclude a general and comprehensive agreement as a means of overcoming the climate of hostility and putting an end to the arms race, foreign intervention and policies of force. Accordingly, with a view to restoring the necessary climate of trust and obtaining from the parties a political commitment to sign the Contadora Act on Peace and Co-operation in Central America, the Ministers believe that it is necessary:

(a) To lay down Lasting Foundations for Peace in Central America;

(b) To identify the measures necessary to consolidate those Foundations and promote mutual trust;

(c) Immediately to sponsor diplomatic initiatives aimed at securing explicit support for those Foundations and for the efforts of all parties directly or indirectly involved;

(d) To offer their good offices for any other necessary initiatives;

(e) To take relevant action to expedite the signing and entry into force of the Contadora Act on Peace and Co-operation in Central America.

I. LASTING FOUNDATIONS FOR PEACE IN CENTRAL AMERICA

Any lasting solution to the conflict in Central America must have just and balanced foundations reflecting the tradition of, and the aspiration for, civilized coexistence among the peoples of Latin America. Accordingly, the Ministers for Foreign Affairs of the Contadora Group and of the Support Group define as follows the Lasting Foundations for Peace in Central America:

1. *A Latin American solution*, which means that the solution to the problems of Latin America must come from and must be guaranteed by the region itself, lest it should become embroiled in the global and strategic East-West conflict.

2. *Self-determination*, which means the independence of each Latin American country in selecting its own form of social and political organization, by establishing at the domestic level the system of government which its population as a whole freely chooses.

3. *Non-interference in the internal affairs of other States*, which means that no country should influence the political situation of the Latin American States, either through direct action or indirectly through the use of third parties, or affect their sovereignty in any way.

4. *Territorial integrity*, which means recognizing the frontiers circumscribing the actions of all the States; within such frontiers they may freely exercise their sovereignty; beyond them their conduct must be in strict compliance with the norms of international law.

5. *Pluralistic democracy*, which means the exercise of universal suffrage through free and periodic elections supervised by independent national agencies; it also means a multiparty system that would ensure the legitimate and organized representation of all schools of thought and all political trends in society, as well as majority government with due respect for the basic rights and freedoms of all citizens and those of political minorities within the framework of the constitutional order.

6. *No armaments or military bases* that would endanger peace and security in the region.

7. *No military operations* by countries of the region, or by countries with interests in the region, which would involve aggression against other countries or pose threats to peace and to the region.

8. *No troops or foreign advisers.*

9. *No support, whether political, logistical or military,* to groups seeking to subvert or destabilize the constitutional order of the Latin American States by means of force or terrorist acts of any kind.

10. *Respect for human rights,* which means unconditional respect for civil, political and religious freedoms so as to ensure the full material and spiritual development of all citizens.

II. Actions to Ensure the Creation of the Lasting Foundations for Peace

In order to ensure the effective existence of the Lasting Foundations for Peace, it is necessary to generate a climate of mutual trust that will revive the spirit of negotiation and reflect the political will to achieve effective support for the Foundations laid down in order to attain the ultimate objective of the signing and entry into force of the Contadora Act on Peace and Co-operation in Central America.

For this purpose, priority must be given to implementation of the following actions:

1. Resumption and conclusion of the negotiations leading to the signing of the Contadora Act on Peace and Co-operation in Central America.
2. Cessation of outside support for the irregular forces operating in the region.
3. Cessation of support for the insurrectionist movements in all countries of the region.
4. Freeze on the acquisition of armaments and scheduled reduction thereof.
5. Suspension of international military manœuvres.
6. Gradual reduction and ultimate elimination of the presence of foreign military advisers and of foreign military installations.
7. Non-aggression commitment on the part of the five Central American countries through unilateral declarations.
8. Effective steps to achieve national reconciliation and full enjoyment of human rights and individual freedoms.
9. Promotion of regional and international co-operation to alleviate the urgent economic and social problems afflicting the Central American region.

The Foreign Ministers agree that, in order to attain the proposed objective of generating mutual trust, it is essential for these initiatives to be undertaken simultaneously.

III. Support for the Lasting Foundations for Peace and for the Specific Actions

The countries in the Contadora Group, with the collaboration that they are requesting from the Support Group, agree to initiate immediately diplomatic overtures designed to obtain explicit adherence to these Foundations and actions on the part of the five Central American countries and other members of the international community interested in peace in the region, particularly the other countries of the American continent.

IV. Good Offices

The member countries of the Contadora Group, with the backing of the Support Group, offer their good offices for the purpose of facilitating the execution of the following actions:

1. Promotion of new activities of national reconciliation in accordance with the legal order in force in each of the countries, since regional stability also presupposes domestic peace-making in those cases where marked divisions have occurred within society.
2. Acceptance of the proposal of the President-elect of Guatemala that a process of consultation on the regional situation should be initiated among the Central American legislative organs, in order to establish a Parliament in the region. This could contribute to a better understanding of the problems of the area and help to strengthen the negotiation efforts.
3. Encouragement of the resumption of talks between the Governments of the United States and of Nicaragua, in order to iron out their differences and to identify possible areas of understanding. Considerate negotiation between the two Governments, which envisages mutual and equitable concessions, is a prerequisite for regional detente.

The dialogue of Manzanillo made it possible to identify the Foundations for viable negotiation, which cannot be further postponed without serious risks to the peace and stability of Latin America. The obstacles that have impeded this endeavour can be removed, if those parties display political will and flexibility.

V. SIGNING AND ENTRY INTO FORCE OF THE PEACE ACT

The eight Foreign Ministers decide to devote all their efforts to the acceleration of the negotiations leading to the speedy signing of the Contadora Act on Peace and Co-operation in Central America and its entry into force.

Caraballeda, 12 January 1986.

Augusto RAMIREZ OCAMPO,
Minister for Foreign Affairs of the Republic of Colombia.

Bernardo SEPULVEDA AMOR,
Secretary for Foreign Affairs of Mexico.

Jorge ABADIA ARIAS,
Minister for Foreign Affairs of the Republic of Panama.

Simón ALBERTO CONSALVI,
Minister for Foreign Affairs of the Republic of Venezuela.

Dante CAPUTO,
Minister for Foreign Affairs and Worship of the Argentine Republic.

Olavo SETUBAL,
Minister for Foreign Affairs of the Federative Republic of Brazil.

Allan WAGNER TIZON,
Minister for Foreign Affairs of the Republic of Peru.

Enrique V. IGLESIAS,
Minister for Foreign Affairs of the Eastern Republic of Uruguay.

Annex 25

Joint Communique of the Plenipotentiaries of Costa Rica, El Salvador, Guatemala and Honduras (United Nations Document A/40/1117, S/18074, Annex), 18 May 1986

The plenipotentiaries of Costa Rica, El Salvador, Guatemala and Honduras, meeting for the joint session of the Contadora Group and Central American countries held on 16, 17 and 18 May 1986 in Panama City, wish to inform the news media of the following:

- In the course of these negotiations, attention was given to the items "military manœuvres" and "armaments and troop strength", on which agreement was still pending;
- During the negotiations, proposals were submitted by the Contadora Group, Nicaragua and Honduras, and a joint proposal by Guatemala and Costa Rica;
- This last proposal, which contains an innovative plan for disarmament and the reduction of armaments and troop strength, received, at the end of the session, the support of the delegations of El Salvador and Honduras, with the result that a four-Power consensus emerged;
- This proposal affords the possibility of entering into real, direct, simple and fair negotiations and provides maximum freedom to the Central American States to fulfil their security needs while at the same time averting an endless arms spiral;
- This same proposal eliminates the imprecise, extremely variable and subjective criteria that characterized previous proposals, which rendered equitable negotiations virtually impossible; and
- The representative of Nicaragua proposed that any negotiations on the limitation of armaments and troop strength should take place after the signing of the Act, which would subsequently entail hypothetical, uncertain and indefinite negotiations and would leave the relevant clause of the Act drafted in a form that was imprecise and indefinite.

They declare that it is the will of their Governments:

1. With a view to achieving detente in the area, to meet the need for a valid and binding commitment on disarmament, the reduction of troop strength and the regulation and limitation of military manœuvres;

2. To achieve a rational balance in the limits for military development in the area, so as to restore confidence among the parties;

3. To fulfil their contractual commitments once the Act comes into force;

4. To submit to international control and supervision; and

5. To gather for the signing of the Act on 6 June 1986.

Annex 26

Esquipulas Declaration, Issued by the Presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua (United Nations Document A/40/1119, S/18106, Annex), 25 May 1986

Letter Dated 27 May 1986 from the Permanent Representative of Guatemala to the United Nations Addressed to the Secretary-General

I have the honour to request you to have circulated as an official document of the fortieth session of the General Assembly, under agenda item 21, and of the Security Council, the text of the "Esquipulas Declaration", signed at Esquipulas, Guatemala, by the five Central American Presidents on 25 May 1986 (see annex).

As the international community will doubtless recognize, the Esquipulas Presidential Summit is the most eloquent testimony to the age-old striving for integration and firm determination to co-operate which continues to prevail among the fraternal peoples of Central America in their search for unity-promoting solutions to the range of problems facing the region.

(*Signed*) Arturo FAJARDO-MALDONADO,
Ambassador,
Permanent Representative.

Annex

Esquipulas Declaration

Having met at Esquipulas, Guatemala, on 24 and 25 May 1986, the Central American Presidents state that they have held a useful meeting marked by the frankness with which they dealt with the problems of Central America. In their discussions, they analysed the areas of agreement and the differences which persisted in their ideas about life and the structure of power in a pluralistic democracy.

They agree that the best political forum which is at present available to Central America for the achievement of peace and democracy and the reduction of tensions produced in countries of the region is the Contadora process sponsored by a number of Latin American countries and recognized by the international community. They agree to continue their dialogue on those issues and others not taken up on this occasion.

Accordingly,

THEY DECLARE

1. That they have decided to hold meetings of Presidents on a regular basis as a necessary and appropriate forum for analysing the most urgent problems

facing the area with respect to peace and regional development and for seeking appropriate solutions to those problems.

In that connection, they express their profound gratitude to the international community for all its efforts to solve the serious problems of the region, and they once again affirm their confidence that they can continue to rely on its valuable support.

2. That they are willing to sign the "Contadora Act for Peace and Co-operation in Central America", and agree to comply fully with all the undertakings and procedures contained in the Act. They recognize that some aspects remain outstanding, such as military manœuvres, arms control and the monitoring of compliance with the agreements. Today, however, in this dialogue among the leaders of fraternal peoples, they find the various proposals put forward by the countries to be sufficiently productive and realistic to facilitate the signing of the Act.

3. That there is a need to undertake efforts aimed at understanding and co-operation and to back them up with institutional machinery for strengthening dialogue, joint development, democracy and pluralism as basic factors for peace in the area and for Central American integration. Accordingly, they have agreed to establish the Central American Parliament. The members of the Parliament shall be freely elected by direct universal suffrage in keeping with the principle of participatory political pluralism. Towards that end, the vice-presidents shall, by mutual agreement, propose to their respective Governments, within 30 days, the membership of a preparatory commission for the Central American Parliament; the commission shall be responsible for preparing a draft treaty on the establishment of the Parliament no later than 90 days after the appointment of its members.

4. That peace in Central America can be achieved only through an authentic democratic process that is pluralistic and participatory, which entails the promotion of social justice and respect for human rights, the sovereignty and territorial integrity of States and the rights of every nation to choose, freely and without outside interference of any kind, its own economic, political and social pattern, it being understood that such a choice is the result of the freely expressed will of the peoples concerned.

5. That they intend to review, update and give new impetus to the processes of economic and social integration of the area so as to realize its development potential to the fullest extent for the benefit of their peoples and to deal more effectively with the serious difficulties they are facing.

They likewise intend to promote and foster joint positions for the area on common economic problems such as the external debt, the deterioration of the terms of trade and the transfer of technologies which are appropriate to the area's needs.

They have also decided to strengthen both institutionally and financially the agencies for Central American integration and to foster regional agreements and actions aimed at securing for those institutions and the region as a whole a treatment in keeping with its needs and special circumstances.

They thank President Vinicio Cerezo Arévalo, the Government of Guatemala and its noble people, for their far-sighted initiative in calling for a Presidential Summit Meeting and the important progress achieved towards peace and democracy in the region. They express their gratitude for the hospitality and kind attention shown to their delegations. They express their wishes for the success of the efforts of President Cerezo and his Government and for the well-being and progress of the fraternal people of Guatemala and the hospitable city of Esquipulas, a Central American symbol of faith, unity and peace.

They have signed this Declaration at Esquipulas, Republic of Guatemala, on the twenty-fifth of May, nineteen hundred eighty-six.

Oscar ARIAS SANCHEZ,
President of Costa Rica.

José NAPOLEON DUARTE,
President of El Salvador.

Marco VINICIO CEREZO AREVALO,
President of Guatemala.

José AZCONA H.,
President of Honduras.

Daniel ORTEGA SAAVEDRA,
President of Nicaragua.

Annex 27

LETTER FROM THE MINISTERS OF FOREIGN RELATIONS OF THE CONTADORA GROUP TO THE SECRETARY-GENERAL OF THE UNITED NATIONS (UNITED NATIONS DOCUMENT A/40/1136, S/18184, ANNEX I), 26 JUNE 1986

Letter Dated 26 June 1986 from the Minister for Foreign Affairs of Colombia, the Secretary for Foreign Affairs of Mexico and the Ministers for Foreign Affairs of Panama and Venezuela Addressed to the Secretary-General

26 June 1986.

In order to comply duly with the resolutions on the situation in Central America adopted both by the Security Council and by the General Assembly and as we have done on previous occasions, we are writing to you once again to provide information and background data on the status of the diplomatic negotiations which our Governments have been promoting.

On 26 September 1985, we wrote to inform you about the efforts to peace which the Governments of Colombia, Mexico, Panama and Venezuela made during that year (see A/40/737-S/17549, Annex I). We emphasized, among other things, the continuation of the negotiations on the Contadora Act on Peace and Security in Central America as one of the main diplomatic tasks agreed with the five Central American Governments.

On 12 and 13 September 1985, a joint meeting of the Foreign Ministers of the Contadora Group and of the Central American Governments took place, at which we submitted a new draft act. That draft incorporated the observations and suggestions made by the Central American Governments during the year, together with a number of proposals representing a fair compromise on issues with respect to which consensus had not been achieved or which were most controversial. We set a period of 45 days for negotiations on the draft, and for resolving the issues considered to be outstanding, on the understanding that we agreed that negotiations on the other issues covered by the Contadora Act on Peace and Co-operation in Central America had been concluded. The only items outstanding from among the very broad range of political, security, economic and social issues covered by the Act were the following:

(a) Control and reduction of armaments;
(b) Implementation and follow-up mechanisms with regard to security and political matters;
(c) Military manœuvres.

Consequently, three meetings of plenipotentiaries were held, from 7 to 10 and from 17 to 19 October and from 19 to 21 November 1985. Although various proposals were put forward at these meetings and the Contadora Group tried to reconcile the proposals, sufficient progress was not made to adhere to the established timetable. The deterioration of the regional situation and the approaches of the Central American Governments themselves hampered the negotiations on substantive issues, and this even had repercussions for the deliberations of international organizations on the matter. On the other hand, it was possible to reach agreement on the implementation and follow-up mechanisms for the agreements and on the final clauses of the Act. The Contadora Group then put forward alternative proposals both on the reduction and control of armaments, and on military manœuvres. However, it was not possible to discuss the proposals in depth.

In view of the standstill reached in the diplomatic efforts and the danger of a political vacuum in the region, the Foreign Ministers of the Contadora Group and of the Support Group held a meeting at Caraballeda, Venezuela, on 11 and 12 January 1986. The purpose of the meeting was to review the regional situation in detail and to give a new impetus to the negotiation process promoted by the Contadora Group. In the Caraballeda Message, we outlined the lasting foundations for peace in Central America and stated that it was necessary to create a climate of mutual trust that would revive the spirit of negotiation and make possible the attainment of the ultimate objective of the signing and entry into force of the Contadora Act. We emphasized the urgency of taking a series of simultaneous actions, including, *inter alia*, the conclusion of negotiations on the Act, the cessation of outside support for irregular forces and insurrectionist movements operating in the region, a freeze on the acquisition of armaments and a scheduled reduction thereof, and effective steps to achieve national reconciliation and full enjoyment of human rights and individual freedoms.

In addition, the countries of the Contadora Group, with the backing of the Support Group, offered their good offices for the purpose of facilitating new activities of national reconciliation in accordance with the legal order in force in each of the countries and the resumption of talks between the Governments of the United States of America and Nicaragua, and they expressed acceptance of the proposal of the then President-elect of Guatemala for the establishment of a regional parliament.

The Guatemala Declaration, signed by the Ministers for Foreign Affairs of the Central American countries attending the inauguration of President Vinicio Cerezo, expressed significant support for the objectives and principles set out in the Caraballeda Message.

On 10 February 1986, the Ministers for Foreign Affairs of the Contadora Group and of the Support Group met with the Secretary of State of the United States of America. The aim was to give impetus to the negotiation process and set in motion the actions envisaged in the Caraballeda Message within the framework of the dialogue in which the eight Latin American Governments have sought to engage with all the parties involved in the Central American conflict. The Latin American Foreign Ministers emphasized the necessity of taking the actions described in the Caraballeda Message as a matter of priority and simultaneously. In that connection, we reiterated that the cessation of outside support for irregular forces operating in the region was an essential factor for peace. We also emphasized our belief that the solution to the Central American crisis must be found through political means and negotiation. At the same time, we recalled that it was imperative to take effective measures of national reconciliation in all the cases in which deep divisions have occurred in society.

On 14 and 15 February 1986, a meeting of plenipotentiaries was held for the purpose of resuming negotiations on the Contadora Act and taking other initiatives conducive to the simultaneous actions envisaged in the Caraballeda Message. The meeting was useful and instructive in so far as it revealed in detail the various and conflicting interpretations that existed with regard to the direction which should be taken in the negotiation process.

At a meeting held at Punta del Este, Uruguay, on 27 and 28 February 1986, the Ministers for Foreign Affairs of the Contadora Group and of the Support Group reaffirmed the principles contained in the Caraballeda Message and agreed on the political necessity of concluding the negotiations on the Contadora Act on Peace and Co-operation in Central America. We agreed to issue a cordial invitation to our colleagues from the five Central American States to attend a joint meeting to review the progress made and consider new courses of action. At Punta del Este, we referred to the importance of normalizing relations between the Governments of Costa Rica and Nicaragua. In that respect we took into account the progress made at the meeting of the Deputy Ministers for Foreign Affairs of the two countries, with the participation of the Contadora Group, held in Managua on 24 February, for the purpose of defining the modalities for a "Civilian Commission for Observation, Prevention and Inspection" along the frontier. We also emphasized that the Caraballeda Message, far from replacing negotiations on the Contadora Act, helped to hasten its entry into force. It was not a matter of picking and choosing from among the actions referred to in the Message. Each activity was valid in itself and hence no one could be made contingent on any other, as they constituted a political and legal duty for each State.

On 12 March 1986, a further meeting was held at San Jose, Costa Rica, during which various explanations were made. This initiative aimed at creating a climate of trust in the region has not led to any further action, notwithstanding the express willingness of the Contadora Group to participate in it and the commitment it has given, together with the Support Group, to approach the international community with a view to obtaining the necessary material and financial resources for the functioning of the Commission.

From 5 to 7 April 1986, a meeting of the Foreign Ministers of the five Central American countries, of the Contadora Group and of the Support Group was held in Panama City for the purpose of reviewing the progress of peace initiatives in Central America and identifying priority measures for future action. The Ministers for Foreign Affairs of the Contadora Group and of the Support Group decided to invite the five Central American Governments immediately to resume negotiations on the only outstanding issues relating to the Contadora Act, namely the control and reduction of armaments and international military manœuvres, on the basis of the proposals submitted by the Contadora Group. In addition, we invited the five Central American Governments to a meeting on 6 June 1986 at Panama City for the purpose of declaring the negotiation of the text of the Contadora Act officially concluded and proceeding to its formal adoption. Lastly, we reiterated that it was imperative for countries with links to and interests in the region to assist in creating a climate conducive to the emergence of the necessary political will on the part of the parties directly involved.

As a result of the positive response from the five Central American Governments, two plenipotentiary meetings were held, from 16 to 18 and from 27 to 29 May 1986. During the meetings, proposals were put forward making it possible to discuss the issues in the detailed manner which they required. There was agreement on some points, but with regard to others, particularly those relating to the control and reduction of the arms race, the assumptions underlying the proposals differed, primarily according to the nature of the various conflicts which exist in the region. After recognizing the impossibility of signing the Contadora Act on the appointed date, the Central American plenipotentiaries communicated the determination of their respective Governments to continue to promote the diplomatic negotiation process.

In between the two meetings of plenipotentiaries, an important meeting took place at Esquipulas, Guatemala, on 24 and 25 May, between the Presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. In the Esquipulas Declaration, the Central American Heads of Government affirmed that the Contadora process was "the best political forum which is at present available to Central America for the achievement of peace and democracy and the reduction of tensions", that they were willing "to sign the 'Contadora Act for Peace and Co-operation in Central America', and agree to comply fully with all the undertakings and procedures contained in the Act" and that "peace in Central America can be achieved only through an authentic democratic process that is pluralistic and participatory, which entails the promotion of social justice and respect for human rights, the sovereignty and territorial integrity of States and the rights of every nation to choose, freely and without outside interference of any kind, its own economic, political and social pattern, it being understood that such a choice is the result of the freely expressed will of the peoples concerned".

The joint meeting of the Central American Ministers for Foreign Affairs of the Contadora Group and of the Support Group took place on 7 June in the above-mentioned context. After carefully analysing the situation in Central America and the outlook for diplomatic negotiations, we informed our Central American colleagues of the conclusions we had reached in the hope, and with the conviction, that in light of the facts known to us all, they would agree with our conclusions.

On that occasion, and in response to the affirmations made in the Esquipulas Declaration, we again expressed the determination of the Governments of the Contadora Group to continue assisting actively in the pacification of the region. We then formally delivered what, in our view, should be the final version of the Contadora Act for Peace and Co-operation in Central America. It contains the totality of the substantive commitments regarding the various issues and aspects covered by the Act, based on criteria of balance and equity for all parties and taking into account the proposals submitted by the Central American plenipotentiaries.

The text we delivered defines and resolves the issues on which agreement was pending. On the question of armaments, for example, a list must be drawn up of the weapons in the countries of the region in order that, at a later stage, they may be controlled, reduced and, if possible, eliminated. The list must be weighted according to the technological capacity and destructive potential of each weapon.

With respect to the issue of international military manœuvres, we believe that the proposals presented by the Contadora Group in November 1985 remain valid in so far as they are based on a general scheme of reciprocity vis-à-vis other equally important issues in the framework of regional security.

Now that the substantive issues of the Contadora Act have been resolved, as the Central American Governments have unequivocally stated, and in order that the Act may be signed, we propose that we should pass on immediately to another phase of the negotiation. In this phase we will deal jointly and systematically with matters of a procedural and operational nature referring principally to the statute of the Verification and Control Commission for Security Matters which will be an integral part of the Act and to other regulatory matters. As a prerequisite for this phase we mentioned that the meaning and scope, which have already been agreed upon in agreements concerning substantive aspects of the Act, must be respected.

Owing to the constitutional provisions of various Central American States, the Contadora Act will not enter into force until the legal instrument has been ratified. Accordingly, preparations for the implementation of the commitments must be made by express agreement between the executive branch of the Central American States. Our proposal therefore implies setting up, as soon as possible, an implementation and follow-up mechanism which could start to operate on a provisional basis. If such a mechanism cannot be set up in the short term the Central American Governments and the Governments of the Contadora Group could take charge of this provisional procedure and carry out the tasks required for the said preparations.

According to the plan we are now proposing, preparations for the speedy execution of agreements relating to security — particularly those involving inventories, censuses, time-limits and timetables, namely those relating to weapons, military manœuvres, bases and foreign military advisers — will be made once the Contadora Act has been signed. If there were an agreement between the various executive branches — the above would not prevent negotiations on such issues as the definition of the limits of military development, delivery of inventories and the conclusion of the statute of the Verification and Control Commission for Security Matters from starting now, under the provisional mechanism referred to above, and on the basis of what has been set forth in the operative part of the Contadora Act, and continuing until such time as the Contadora Act is signed and ratified.

Basically, the formulas we are suggesting reflect — in a summarized and harmonized form — the issues raised and the concerns expressed by the various Central American Governments. We are convinced that the final proposal of the Contadora Act establishes the bases for regional co-operation and lasting peace which will benefit Central American relations as a whole.

The Contadora Act for Peace and Co-operation in Central America, which we are communicating through you, to the international community, testifies to Latin America's determination to deal with and resolve the conflicts that affect our peoples. It expresses the firm conviction that there are no unilateral solutions, particularly if such solutions favour, or are based on, the use of force. It contains the fundamental principles on which any genuine and lasting solution must be built starting with the legitimate aspirations of the Central American States. It also calls on the international community, particularly the countries with ties and interests in the region, to treat the region with respect and to encourage it. Central America has a historic opportunity to prepare for a more promising future that will cater to its genuine needs and steer it away from global confrontations in which it has no part.

In the Panama Message of 7 June 1986, the Governments of the Contadora Group and of the Support Group said that it would be erroneous to believe that the crisis could be dealt with merely by means of preparing a draft treaty. Progress must be made, as we stated in the Caraballeda Message, in bringing about the necessary conditions for the signing of the Contadora Act. If that is to be done, as we outlined in our Message, it is essential that three fundamental commitments be accepted: the commitment not to use a country's territory as a base for committing acts of aggression against another country or for providing military or logistical support to irregular forces or subversive groups; not to form part of military or political alliances that threaten peace and security in the region, either directly or indirectly, thus drawing the region into the East-West conflict; and that no power should give military or logistical support to the irregular forces or subversive groups that are operating, or that may operate, in the countries of the region, or use or threaten to use force as a means of overthrowing any government in the area. We believe that peace should be consolidated in the region through the rule of pluralistic democracy, which calls for the exercise of universal suffrage through free, regular elections; a multi-party system in such a way as to permit the legal and organized representation of all beliefs and political action in society; majority government, thus guaranteeing the freedoms and fundamental rights of all citizens and safeguarding those of political minorities in the context of the constitutional order.

In reaffirming our conviction that peace must be consolidated through respect for the cardinal principles of coexistence among nations, democratic development and the economic and social growth of the peoples of the region, the Contadora Group and the Support Group reiterate to the countries of the region and to those with ties and interests in the region the steadfast determination of our Governments to lend their good offices to all parties involved in these commitments. Likewise, we are prepared to analyse and agree on the most suitable procedures to ensure that they are duly fulfilled.

(Signed) Augusto RAMIREZ OCAMPO,
Minister for Foreign Affairs
of Colombia.

(Signed) Bernardo SEPULVEDA AMOR,
Secretary for Foreign Affairs
of Mexico.

(Signed) Jorge ABADIA ARIAS,
Minister for Foreign Affairs
of Panama.

(Signed) Simón ALBERTO CONSALVI,
Minister for Foreign Affairs
of Venezuela.

Annex 28

EXCERPTS FROM THE INTERVIEW OF THE PRESIDENT OF NICARAGUA BY THE SPANISH INFORMATION NETWORK (SIN), 27 JULY 1986[1]

(Translation)

SPANISH TELEVISION CHANNEL (SIN)
OF THE UNITED STATES OF AMERICA
WASHINGTON, D.C.

Television Programme "Topics and Debates"

Presenter: Guillermo Descalzi

Interviewee: Commander Daniel Ortega Saavedra

Sunday, 27 July 1986.

. . . .

Question: What is happening with Honduras? What is the attitude of Honduras? How do you define it?

Answer: Well, Honduras is under a lot of pressure from the United States. It has been obliged to accept the presence of mercenary camps there; it has been obliged to accept American military bases, because it is under economic blackmail on the part of the United States.

Question: When Israel saw that in Lebanon, it invaded Lebanon. Are you going to invade the border zone with Honduras?

Answer: The thing is that we do not have any problems with Honduras. We have problems with the United States.

We are fighting against the mercenary forces and we have been fighting with the mercenary forces in the border areas.

Question: And you feel that you have the right to do so?

Answer: Well, the thing is that this is not aggression against Honduras. That is, when the mercenary forces come from Honduras and invade our country, we defend ourselves and there is cross-fire and there is combat in the border zone and this is not an action directed against Honduras. To the contrary, I think that this helps the defence of the sovereignty of Honduras . . . .

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[1] A copy of the videotape was deposited in the Registry.

Annex 29

RESOLUTIONS OF THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES CONCERNING "PEACE EFFORTS IN CENTRAL AMERICA"

Document A

AG/Res. 675 (XIII-0/83)

PEACE EFFORTS IN CENTRAL AMERICA

(Resolution adopted at the seventh plenary session, held on
18 November 1983)

The General Assembly,

Having seen the communication presented by the Ministers of Foreign Affairs of Colombia, Mexico, Panama and Venezuela to this Assembly on the peace efforts they are making in Central America;

Noting the Declaration signed by the Presidents of Colombia, Mexico, Panama, and Venezuela at Cancún, Mexico, on July 17, 1983;

Commending the Document of Objectives adopted last September under the auspices of the Contadora Group, by Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua;

Cognizant that the Document of Objectives contains a set of principles for addressing the most serious problems of the area and achieving peace, security, and the co-operation needed for the region's economic and social development;

Considering that the Contadora Group is engaged in a worthy effort aimed at achieving peaceful relations in the region, based on the creation and strengthening of a climate of international security in keeping with the principles established in international law, of democratic and pluralistic institutions, and of sustained economic and social development activities,

Resolves:

1. To reaffirm the importance of the principles and rules of American comity contained in the Charter of the Organization of American States, and particularly the obligation to settle disputes by peaceful procedures alone, to abstain from the use of force, not to interfere either directly or indirectly or for whatever reason in the internal or external affairs of any other State, and to respect the right of each State to lead its own cultural, political, and economic life freely and spontaneously.

2. To reaffirm the right of all countries in the region to live in peace and security, free from any external interference.

3. To express its firmest support for the efforts of the Contadora Group and to urge it to persevere in its efforts.

4. To welcome with satisfaction the Declaration of Cancún on Peace in Central America issued by Presidents Belisario Betancur of Colombia, Miguel de la Madrid of Mexico, Ricardo de la Espriella of Panama, and Luis Herrera Campins of Venezuela.

5. To note with approval the adoption of the Document of Objectives approved by the Central American States at the proposal of the Contadora Group, which contains a set of basic principles and commitments to be negotiated for addressing the conflicts in the area and achieving peace, international security, democracy, and the cooperation needed for the region's economic and social development.

6. To urge the Central American States to negotiate forthwith, on the basis of the principles enunciated in the Document of Objectives, agreements that will formalize the objectives arising from those documents, and devise monitoring and verification mechanisms that will ensure their fulfilment.

7. To request all the States to abstain from any act that may heighten tensions, hamper the negotiation efforts the Contadora Group is making in mutual agreement with the Central American governments, or impede the creation of a climate of dialogue and negotiation conducive to the restoration of peace in the region.

Document B

AG/Res. 702 (XIV-0/84)

PEACE EFFORTS IN CENTRAL AMERICA

(Resolution adopted at the eighth plenary session,
held on 17 November 1984)

The General Assembly,

Considering:

The communication the Ministers of Foreign Affairs of Colombia, Mexico, Panama, and Venezuela addressed to this Assembly regarding the efforts they have made throughout 1984 to bring about peace in Central America;

Recalling:

That in adopting resolution AG/RES. 675 (XIII-0/83), "Peace Efforts in Central America", this Assembly reaffirmed the importance of the principles and standards of Inter-American comity set forth in the Charter of the Organization; and

That the same resolution urged the Central American States to negotiate forthwith agreements for solving conflicts in their area and achieving the peace, security, democracy, and co-operation needed for the economic and social development of the region; asked all States to refrain from engaging in acts that might hinder efforts at negotiation; and expressed the wholehearted support of the General Assembly for the efforts of the Contadora Group, urging it to persist in its efforts;

Noting with pleasure:

The intensive effort made by the Foreign Ministers of the Contadora Group in consulting, mediating between, and negotiating with, the Central American governments with a view to obtaining formal juridical and political commitments that will create a climate of security in Central America consonant with the principles of international law, strengthen democratic, representative, and pluralistic institutions, and promote sustained action for the economic and social development of all the countries;

Considering:

That the Contadora Act for Peace and Co-operation in Central America, of September 7, 1984, represents a fundamental advance in the process of dialogue and negotiation for regional peace, security, and development; and

Noting with satisfaction:

That the resolution adopted by consensus on October 26, 1984, by the General Assembly of the United Nations holds that the Contadora Act provides the bases for détente, lasting peace, and the promotion of economic and social development in the region,

Resolves:

1. To reiterate that it is the obligation of all American States to settle their conflicts by peaceful methods alone; not to resort to the use of military force or any other type of coercion; not to intervene directly or indirectly in the internal or external affairs of any other State for any reason, and to respect the right of every State to determine freely and spontaneously the character of its political, economic, and cultural life.
2. To reiterate that it is the right of all countries in the region to live in peace and security, free from all outside interference.
3. To reiterate the need to further the strengthening of democratic, representative, and pluralistic institutions by promoting sustained action for the economic and social development of the countries of the region.
4. To welcome with satisfaction the Contadora Act for Peace and Co-operation in Central America, of September 7, 1984, resulting from an intense effort of consultation and negotiation carried out by the Governments of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua under the auspices of the Contadora Group.
5. To urge all the Central American governments to manifest their will for peace and to intensify their consultations among themselves and with the Contadora Group in order to bring the negotiation process to its conclusion with prompt signature of the Contadora Act.
6. To exhort all States, particularly those having ties to, and interest in the region, to facilitate signature of the Contadora Act; to respect at the appropriate time the commitments that may be agreed upon; and to adhere to the Additional Protocol to the aforesaid instrument.
7. To reiterate its wholehearted support for the efforts the Contadora Group is making to surmount the grave crisis in Central America.

Document C

AG/Res. 770 (XV-0/85)

COMMUNICATION OF THE CONTADORA GROUP WITH REGARD TO EFFORTS ON BEHALF OF PEACE IN CENTRAL AMERICA

(Resolution adopted at the third plenary session, held on 9 December 1985)

The General Assembly,

Recalling:

Its resolutions AG/RES. 675 (XIII-0/83) and AG/RES. 702 (XIV-0/84) and that for the past 34 months the countries of Central America, with the support of the Contadora Group, have engaged intensively in negotiations aimed at finding a solution to the Central American crisis.

Resolves:

1. To take note with satisfaction of the communication the Ministers of Foreign Affairs of Colombia, Mexico, Panama, and Venezuela have presented to this Assembly regarding peace negotiations carried out during 1985 and the progress achieved to date.

2. To urge the Central American countries and the Contadora Group to persevere in their efforts to conclude the negotiations to achieve an agreement for peace and co-operation in the region.

3. To request the Contadora Group to present to the sixteenth regular session of the General Assembly a communication on its peace efforts.

Document D

(Translation)

Sixteenth Ordinary Session,
10 November 1986,
City of Guatemala, Guatemala.

OEA/Ser.P
Ag/cgdoc.23/86
14 November 1986
Original: Spanish.

GENERAL COMMISSION

Communication from the Ministers of Foreign Relations of the Contadora Group and of the Support Group on Peace Processes in Central America

(Point 10 of the Agenda)

The General Assembly,

Bearing in mind Resolutions AG/RES. 675 (XIII-0/83) of 18 November 1983, AG/RES. 702 (XIV-0/84) of 17 November 1984, and AG/RES. 770 (XV-0/85) of 9 December 1985, in which the General Assembly expressed its full support for the Contadora Group and called upon it to persevere in its peace processes in Central America;

Having regard to the communication from the Ministers of Foreign Relations of the Contadora Group and of the Support Group to the Sixteenth Ordinary Session of the General Assembly, in which the Ministers of Foreign Relations reported on the processes carried out up until the present and expressed their anxiety about the deterioration of the situation in Central America;

Resolves:

1. to take due note of the communication from the Ministers of Foreign Relations and to acknowledge the commendable efforts that the Contadora Group and the Support Group have been carrying out with a view to achieving peace in Central America;

2. to reiterate its support for the peace processes of the Contadora Group and of the Support Group and to call upon all States to continue to give them their full support;

3. to request the Contadora Group and the Support Group to persist in their praise-worthy efforts in favour of peace in Central America;

4. to request the Contadora Group and the Support Group to present to the Seventeenth Ordinary Session a report on their processes in favour of peace.

Annex 30

Resolutions of the General Assembly of the United Nations concerning the Situation in Central America: Threats to International Peace and Security and Peace Initiatives

Document A

38/10. THE SITUATION IN CENTRAL AMERICA: THREATS TO INTERNATIONAL PEACE AND SECURITY AND PEACE INITIATIVES

The General Assembly,

Recalling Security Council resolution 530 (1983) of 19 May 1983 in which the Council encouraged the efforts of the Contadora Group and appealed urgently to all interested States in and outside the region to co-operate fully with the Group, through a frank and constructive dialogue, so as to resolve their differences,

Reaffirming the purposes and principles of the Charter of the United Nations relating to the duty of all States to refrain from the threat or use of force against the sovereignty, territorial integrity or political independence of any State,

Also reaffirming the inalienable right of all peoples to decide on their own form of government and to choose their own economic, political and social system free from all foreign intervention, coercion or limitation,

Considering that the internal conflicts in the countries of Central America stem from the economic, political and social conditions obtaining in each of those countries and that they should not, therefore, be placed in the context of East-West confrontation,

Deeply concerned at the worsening of tensions and conflicts in Central America and the increase in outside interference and acts of aggression against the countries of the region, which endanger international peace and security,

Mindful of the necessity of promoting the achievement of peace on a sound basis, which would make possible a genuine democratic process, respect for human rights, and economic and social development,

Noting with deep concern that in recent weeks armed incidents, border clashes, acts of terrorism and sabotage, traffic in arms and destabilizing actions in and against countries of the region have increased in number and intensity,

Noting with great concern the military presence of countries from outside the region, the carrying out of overt and covert actions, and the use of neighbouring territories to engage in destabilizing actions, which have served to heighten tensions in the region,

Deeply concerned at the prolongation of the armed conflict in countries of Central America, which has been aggravated by increasing foreign intervention, *Bearing in mind* the progress achieved in the meetings that the Ministers for Foreign Affairs of the Contadora Group have held with the Foreign Ministers of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua in identifying issues of concern and proposing appropriate procedures for the consideration of those issues,

Recalling the Cancún Declaration on Peace in Central America issued by the Presidents of Colombia, Mexico, Panama and Venezuela on 17 July 1983[1], which contains an appeal for political commitments on the part of countries situated in and outside the region with the aim of achieving lasting peace in the area,

Bearing in mind the Cancún Declaration and the endorsement by the States of Central America of a Document of Objectives[2], which provides a basis for an agreement on the negotiations, that should be initiated at the earliest possible date with the aim of drawing up agreements and adopting the necessary procedures for formalizing the commitments and ensuring appropriate systems of control and verification,

Appreciating the broad international support expressed for the efforts of the Contadora Group to secure a peaceful and negotiated settlement of the conflicts affecting the region,

1. *Reaffirms* the right of all the countries of the region to live in peace and to decide their own future, free from all outside interference or intervention, whatever pretext may be adduced or whatever the circumstances in which they may be committed;

2. *Affirms* that respect for the sovereignty and independence of all States of the region is essential to ensure the security and peaceful coexistence of the Central American States;

3. *Condemns* the acts of aggression against the sovereignty, independence and territorial integrity of the States of the region, which have caused losses in human life and irreparable damage to their economies, thereby preventing them from meeting the economic and social development needs of their peoples; especially serious in this context are:

(a) The attacks launched from outside Nicaragua against that country's strategic installations, such as airports and seaports, energy storage facilities and other targets whose destruction seriously affects the country's economic life and endangers densely populated areas;

(b) The continued losses in human life in El Salvador and Honduras, the destruction of important public works and losses in production;

(c) The increase in the number of refugees in several countries of the region;

4. *Urges* the States of the region and other States to desist from or to refrain from initiating military operations intended to exert political pressure, which aggravate the situation in the region and hamper the efforts to promote negotiations that the Contadora Group is undertaking with the agreement of the governments of Central America;

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[1] A38/303-S/15877, annex. For the printed text, see *Official Records of the Security Council, Thirty-eighth Year, Supplement for July, August and September 1983*, document S/15877, annex.

[2] *Official Records of the Security Council, Thirty-eighth Year, Supplement for October, November and December 1983*, document S/16041, annex.

5. *Notes with satisfaction* that the countries of the region have agreed to take measures leading to the establishment and, where appropriate, the improvement of democratic, representative and pluralistic systems which will guarantee effective popular participation in decision-making and ensure the free access of various currents of opinion to honest and periodic electoral processes based on the full observance of civil rights, emphasizing that the strengthening of democratic institutions is closely linked to evolution and advances achieved in the sphere of economic development and social justice;

6. *Expresses its firmest support* for the Contadora Group and urges it to persevere in its efforts, which enjoy the effective support of the international community and the forthright co-operation of the interested countries in or outside the region;

7. *Welcomes with satisfaction* the Cancún Declaration of the Presidents of Colombia, Mexico, Panama and Venezuela and the Document of Objectives endorsed by the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, which contains the basis for the start of negotiations to ensure harmonious coexistence in Central America;

8. *Requests* the Secretary-General, in pursuance of Security Council resolution 530 (1983), to keep the Council regularly informed of the development of the situation and of the implementation of that resolution;

9. *Requests* the Secretary-General to submit a report to the General Assembly at its thirty-ninth session on the implementation of the present resolution;

10. *Decides* to keep under review the situation in Central America, threats to security which may occur in the region and the progress of peace initiatives.

53rd plenary meeting
11 November 1983.

Document B

39/4. THE SITUATION IN CENTRAL AMERICA: THREATS TO INTERNATIONAL PEACE AND SECURITY AND PEACE INITIATIVES

The General Assembly,

Recalling Security Council resolution 530 (1983) of 19 May 1983, in which the Council encouraged the efforts of the Contadora Group and appealed urgently to all interested States in and outside the region to co-operate fully with the Group, through a frank and constructive dialogue, so as to achieve solutions to the differences between them,

Recalling General Assembly resolution 38/10 of 11 November 1983, in which the Assembly, *inter alia*, expressed its firmest support for the Contadora Group and urged it to persevere in its efforts, which enjoy the effective support of the international community and the forthright co-operation of the countries in and outside the region,

Noting with satisfaction the results of the efforts made by the Contadora Group, in particular the Contadora Act on Peace and Co-operation in Central America of 7 September 1984[1],

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[1] A/39/562-S/16776, annex. For the printed text, see *Official Records of the Security Council, Thirty-ninth Year, Supplement for July, August and September 1984*, document S/16775, annex.

Considering that the Contadora Act is the result of an intense process of consultations and negotiations between the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, promoted by the Contadora Group,

Also considering that the Contadora Act is a major step in bringing to fruition the negotiation process in that it lays the foundations for détente, lasting peace and the promotion of economic and social development in the region,

Taking note of the report submitted by the Secretary-General in pursuance of General Assembly resolution 38/10[1],

1. *Urges* each of the five Central American Governments to speed up its consultations with the Contadora Group with the aim of bringing to a conclusion the negotiation process with the early signing of the Contadora Act on Peace and Co-operation in Central America, thereby facilitating full compliance with the commitments provided for in the Act and the entry into force of the various mechanisms for implementation and follow-up;
2. *Also urges* all States, in particular those with ties to and interests in the region, to respect fully the purposes and principles of the Contadora Act and the commitments undertaken by virtue of their accession to its Additional Protocol;
3. *Requests* the Secretary-General, in accordance with Security Council resolution 530 (1983), to report at regular intervals to the Council on developments in the situation and the implementation of that resolution;
4. *Requests* the Secretary-General to submit to the General Assembly, by 15 December 1984 at the latest, a report on progress made in the implementation of the present resolution[2];
5. *Decides* to include in the provisional agenda of its fortieth session the item entitled "The situation in Central America: threats to international peace and security and peace initiatives".

39th plenary meeting
26 October 1984.

Document C

RESOLUTION 41 ON "THE SITUATION IN CENTRAL AMERICA: THREATS TO INTERNATIONAL PEACE AND SECURITY AND PEACE INITIATIVES"

(Adopted on 17 November 1986)

(Transcription)

The General Assembly,

Recalling Security Council resolution 530 (1983) of 19 May 1983, in which the Council reaffirmed the right of all the countries of the Central American region to live in peace and security, free from outside interference.

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[1] A/39/562-S/16775. For the printed text, see *Official Records of the Security Council, Thirty-ninth Year, Supplement for July, August and September 1984*, document S/16775.

[2] The report was issued under the symbol A/39/827-S/16865. For the printed text see *Official Records of the Security Council, Thirty-ninth Year, Supplement for October, November and December 1984*, document S/16865.

Recalling that the Security Council, in that resolution, encouraged the efforts of the Contadora Group and appealed urgently to all interested States in and outside the region to co-operate fully with the Group, through a frank and constructive dialogue, so as to achieve solutions to existing differences,

Recalling General Assembly resolution 38/10 of 11 November 1983, in which the Assembly, *inter alia*, expressed its firmest support for the Contadora Group and urged it to persevere in its efforts, which enjoy the effective support of the international community and the forthright co-operation of the interested countries in and outside the region,

Recalling also General Assembly resolution 39/4 of 26 October 1984, in which the Assembly, *inter alia*, urged each of the five Central American Governments to speed up its consultation with the Contadora Group with the aim of bringing to a conclusion the negotiations process, and to respect fully the purposes and principles of the Contadora Act on Peace and Co-operation in Central America,

Recalling Security Council resolution 562 (1985) of 10 May 1985, in which the Council urged all States to refrain from carrying out, supporting or promoting political, economic or military actions of any kind against any State in the region which might impede the peace objectives of the Contadora Group,

Taking note of the various reports submitted by the Secretary-General in pursuance of General Assembly resolution 39/4,

Sharing the concern of the Latin American countries at the worsening of the situation in Central America and its possible implications for the entire region, which the Ministers for Foreign Affairs of the Contadora Group and the Support Group expressed in their declaration of 1 October 1986,

Agreeing with that declaration that the worsening of the crisis in Central America could create serious tension and conflicts throughout the continent, and that, the peace of Central America is therefore the peace of Latin America,

Bearing in mind the resolution adopted on 14 November 1986 by the General Assembly of the Organization of American States, meeting in Guatemala, which, *inter alia*, requested the Contadora Group and the Support Group to persevere in their valuable efforts to achieve peace in Central America, and urged all States to continue to give them their resolute support,

Convinced that the peoples of Latin America wish to achieve peace, development, and justice without outside interference, in accordance with their own decision and their own historical experience, and without sacrificing the principles of self-determination and non-intervention,

Convinced that it is imperative to avoid a war in Central America, and that this is primarily the responsibility of the governments directly or indirectly involved in the conflict, as well as a task for all politically responsible governments and individuals who are prepared to defend the cause of peace,

1. *Reaffirms* its conviction that the global, comprehensive and negotiated solution of the conflict in Central America requires that all States fully respect the principles of international law enshrined in the Charter of the United Nations,

2. *Acknowledges* the commendable efforts being made by the Contadora Group and the Support Group with a view to achieving peace in Central America,

3. *Reiterates* its support for the peace activities of the Contadora Group and the Support Group, requesting them to persevere in their valuable efforts, and urges all States to continue to give them their resolute support.

4. *Requests* the Secretary-General to report to the General Assembly at its forty-second session on the implementation of the present resolution.

5. *Decides* to include in the provisional agenda of its forty-second session the item entitled "The situation in Central America: threats to international peace and security and peace initiatives".

Annex 31

EXTRACT FROM THE FINAL ACT OF THE LUXEMBOURG CONFERENCE, 11 AND 12 NOVEMBER 1985

(Transcription)

The Conference discussed the political and economic situation in Central America and relations between Central America and the European Community.

During the Conference:

1. The High Representatives of the participating countries reaffirmed their commitment to the continuation and development of the political dialogue instituted at the Conference held in San José de Costa Rica, in accordance with the principles set out in the San José Declaration of 29 September 1984.

They are convinced that this political dialogue will contribute to the efforts of the Central American countries — with the support and with the encouragement of the Contadora Group — to find a negotiated, regional, global, peaceful solution in order to put an end to the violence and instability in the area and to foster social justice and economic development and a respect for human rights and democratic liberties.

This peaceful solution must be based on the principles laid down in the United Nations Charter, the OAS Charter and the Universal Declaration of Human Rights and on the Contadora Group's "document of objectives", and Draft Document on Peace and Co-operation in Central America dated 12 September 1985, approved by all the States in the area.

It was accordingly agreed that this political dialogue should be institutionalized, in particular by the holding of annual meetings, in principle at Ministerial level.

The Contadora Group, which is continuing its efforts to bring about a peaceful solution in Central America, will play a full part in the meetings to be held in the context of the political dialogue between the countries of Central America and those of the European Community.

Annex 32

ADDRESS BY THE MINISTER OF FOREIGN RELATIONS OF HONDURAS TO THE GENERAL ASSEMBLY OF THE ORGANIZATION OF AMERICAN STATES, 13 NOVEMBER 1986 (EXCERPTS)

(Translation)

It was this vacuum which gave rise to the birth, within the Organization of American States, of the Contadora Group, and it is now more necessary than ever to complete the negotiation of the matters outstanding, doing so in the Contadora Act for Peace and Co-operation in Central America.

On 6 June of this year, the Ministers of Foreign Relations of the Contadora Group and of the Support Group met. They delivered to us the text of what in the opinion of the Mediating Group ought to constitute the final version of the "Contadora Act".

However, it was not possible for the States of Central America to approve that text because it did not offer, in our opinion, sufficient guarantees on matters of security, democratization and the international supervision of agreements.

In fact, my Government is willing to subscribe to the Act in so far as it contains agreements that lend themselves to supervision both as regards security and as regards democratization.

Annex 33

COMMUNIQUÉ OF THE MINISTERS OF FOREIGN RELATIONS OF THE CONTADORA GROUP AND OF THE SUPPORT GROUP, FOLLOWING THEIR PEACE MISSION TO THE CAPITALS OF THE FIVE CENTRAL AMERICAN COUNTRIES, ACCOMPANIED BY THE SECRETARIES-GENERAL OF THE ORGANIZATION OF AMERICAN STATES AND OF THE UNITED NATIONS, MEXICO CITY, JANUARY 1987

(Translation)

The Ministers of Foreign Relations of Colombia, Mexico, Panama and Venezuela, Members of the Contadora Group, and the Ministers of Foreign Relations of Argentina, Brazil, Peru and Uruguay, Members of the Support Group, in the presence of the Secretary-General of the United Nations and of the Secretary General of the Organization of American States, carried out a Peace Mission to the capitals of the five countries of Central America, pursuant to the decision adopted at the last Meeting in Rio de Janeiro on 18 December 1986.

The principal objectives of the Mission were to promote the co-ordination of the policy by the Heads of State of Central America in relation to the problems of the region, to ascertain what measures would render possible the advancing of the negotiations, to consider the actions which would contribute to a peaceful solution, and thus to bring about a climate of mutual confidence between the governments of the area.

As a result of this initiative, we, the eight Ministers of Foreign Relations, make the following Report:

- All the Heads of State of the countries of the area acknowledged the serious deterioration of the situation in Central America, as shown fundamentally in an escalation of the fighting and in the stagnation of diplomatic negotiations.
- All of the Heads of State outlined initiatives which, from their point of view, could lead to the overcoming of the present critical situation. Consultations with them could bring about the identification of points of convergence with a return to dialogue.
- The five Presidents noted the presence of the Secretaries-General of the United Nations and of the Organization of American States, based on their powers and on Resolutions adopted by their respective Organizations, and they offered the services that both mentioned in their Aide-Mémoire of 18 November 1986 for the purpose of contributing to the peace efforts. The Ministers of Foreign Relations of the Contadora Group and of the Support Group welcomed this offer and agreed on the importance of continuing to count on the help of the Secretaries-General.
- The greatest obstacles rendering dialogue difficult would appear to result from different conceptions as to the manner of tackling the problems and of promoting solutions to the serious differences of a political nature, as well as from the persistence of acts which violate international law.
- It has to be acknowledged that there still does not exist the necessary po-

litical will to go ahead with the various proposals which have been put forward in favour of reconciliation.

— Nevertheless, all the Heads of the Central American States have expressly stated to the Mission that the Forum of Contadora continues to be the most adequate instrument to reach a negotiated solution to the regional conflict, and we consider it to be fundamental that we continue our efforts for peace in the area.

For this reason, the Contadora Group, with the co-operation of the Support Group, calls upon the parties to take an essential look as a whole at all the points in common which will enable political dialogue to recommence forthwith. It is hoped that by this means the negotiating process will be reactivated.

Aware of the nature of our task, we reiterate our determination to maintain dialogue with all the countries directly or indirectly involved in the conflict. This includes the United States, the Government of which has publicly stated that it supports the Contadora process, and whose contribution is necessary in order successfully to achieve a political solution to the regional conflict.

In the same spirit, during the forthcoming weeks we intend to hold an exchange of points of view with the Ministers of Foreign Relations of the European Communities, who have firmly and consistently supported the peace processes.

Finally, upon renewing our determination to continue to push on with diplomatic negotiations, we utter the hope that the expressions of political will that have been put to us by the five Heads of States in Latin America during the Peace Mission will be converted into concrete actions. We also call upon all parties directly or indirectly involved to abstain from using force and from any act that would hinder the negotiating process. For negotiations constitute the only viable means of achieving that peace to which the peoples of Central America aspire.

Annex 34

American Treaty on Pacific Settlement ("Pact of Bogota"), Signed at the Ninth International Conference of American States, Bogota, 30 March-2 May 1948. Official English Text

(*Treaty Series*, No. 17)

In the name of their peoples, the Governments represented at the Ninth International Conference of American States have resolved, in fulfilment of Article XXIII of the Charter of the Organization of American States, to conclude the following Treaty:

CHAPTER ONE

General Obligation to Settle Disputes by Pacific Means

Article I. The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures.

Article II. The High Contracting Parties recognize the obligation to settle international controversies by regional pacific procedures before referring them to the Security Council of the United Nations.

Consequently, in the event that a controversy arises between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution.

Article III. The order of the pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided.

Article IV. Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfilment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded.

Article V. The aforesaid procedures may not be applied to matters which, by their nature, are within the domestic jurisdiction of the State. If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties.

Article VI. The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.

Article VII. The High Contracting Parties bind themselves not to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective State.

Article VIII. Neither recourse to pacific means for the solution of controversies, nor the recommendation of their use, shall, in the case of an armed attack, be ground for delaying the exercise of the right of individual or collective self-defense, as provided for in the Charter of the United Nations.

CHAPTER TWO

PROCEDURES OF GOOD OFFICES AND MEDIATION

Article IX. The procedure of good offices consists in the attempt by one or more American Governments not parties to the controversy, or by one or more eminent citizens of any American State which is not a party to the controversy, to bring the parties together, so as to make it possible for them to reach an adequate solution between themselves.

Article X. Once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the States or citizens that have offered their good offices or have accepted an invitation to offer them; they may, however, by agreement between the parties, be present at the negotiations.

Article XI. The procedure of mediation consists in the submission of the controversy to one or more American Governments not parties to the controversy, or to one or more eminent citizens of any American State not a party to the controversy. In either case the mediator or mediators shall be chosen by mutual agreement between the parties.

Article XII. The functions of the mediator or mediators shall be to assist the parties in the settlement of controversies in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution. No report shall be made by the mediator and, so far as he is concerned, the proceedings shall be wholly confidential.

Article XIII. In the event that the High Contracting Parties have agreed to the procedure of mediation but are unable to reach an agreement within two months on the selection of the mediator or mediators, or no solution to the controversy has been reached within five months after mediation has begun, the parties shall have recourse without delay to any one of the other procedures of peaceful settlement established in the present Treaty.

Article XIV. The High Contracting Parties may offer their mediation, either individually or jointly, but they agree not to do so while the controversy is in process of settlement by any of the other procedures established in the present Treaty.

CHAPTER THREE

PROCEDURE OF INVESTIGATION AND CONCILIATION

Article XV. The procedure of investigation and conciliation consists in the submission of the controversy to a Commission of Investigation and Conciliation, which shall be established in accordance with the provisions established in subsequent articles of the present Treaty, and which shall function within the limitations prescribed therein.

Article XVI. The party initiating the procedure of investigation and conciliation shall request the Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. The Council for its part shall take immediate steps to convoke it.

Once the request to convoke the Commission has been received, the controversy between the parties shall immediately be suspended, and the parties shall refrain from any act that might make conciliation more difficult. To that end, at the request of one of the parties, the Council of the Organization of American States may, pending the convocation of the Commission, make appropriate recommendations to the parties.

Article XVII. Each of the High Contracting Parties may appoint, by means of a bilateral agreement consisting of a simple exchange of notes with each of the other signatories, two members of the Commission of Investigation and Conciliation, only one of whom may be of its own nationality. The fifth member, who shall perform the functions of chairman, shall be selected immediately by common agreement of the members thus appointed.

Any one of the contracting parties may remove members whom it has appointed, whether nationals or aliens; at the same time it shall appoint the successor. If this is not done, the removal shall be considered as not having been made. The appointments and substitutions shall be registered with the Pan American Union, which shall endeavor to ensure that the commissions maintain their full complement of five members.

Article XVIII. Without prejudice to the provisions of the foregoing article, the Pan American Union shall draw up a permanent panel of American conciliators, to be made up as follows:

(a) Each of the High Contracting Parties shall appoint, for three-year periods, two of their nationals who enjoy the highest reputation for fairness, competence and integrity;
(b) The Pan American Union shall request of the candidates notice of their formal acceptance, and it shall place on the panel of conciliators the names of the persons who so notify it;
(c) The governments may, at any time, fill vacancies occurring among their appointees; and they may reappoint their members.

Article XIX. In the event that a controversy should arise between two or more American States that have not appointed the Commission referred to in Article XVII, the following procedure shall be observed:

(a) Each party shall designate two members from the permanent panel of American conciliators, who are not of the same nationality as the appointing party.
(b) These four members shall in turn choose a fifth member, from the permanent panel, not of the nationality of either party.

(c) If, within a period of thirty days following the notification of their selection, the four members are unable to agree upon a fifth member, they shall each separately list the conciliators composing the permanent panel, in order of their preference, and upon comparison of the lists so prepared, the one who first receives a majority of votes shall be declared elected. The persons so elected shall perform the duties of chairman of the Commission.

Article XX. In convening the Commission of Investigation and Conciliation, the Council of the Organization of American States shall determine the place where the Commission shall meet. Thereafter, the Commission may determine the place or places in which it is to function, taking into account the best facilities for the performance of its work.

Article XXI. When more than two States are involved in the same controversy, the States that hold similar points of view shall be considered as a single party. If they have different interests they shall be entitled to increase the number of conciliators in order that all parties may have equal representation. The chairman shall be elected in the manner set forth in Article XIX.

Article XXII. It shall be the duty of the Commission of Investigation and Conciliation to clarify the points in dispute between the parties and to endeavour to bring about an agreement between them upon mutually acceptable terms. The Commission shall institute such investigations of the facts involved in the controversy as it may deem necessary for the purpose of proposing acceptable bases of settlement.

Article XXIII. It shall be the duty of the parties to facilitate the work of the Commission and to supply it, to the fullest extent possible, with all useful documents and information, and also to use the means at their disposal to enable the Commission to summon and hear witnesses or experts and perform other tasks in the territories of the parties, in conformity with their laws.

Article XXIV. During the proceedings before the Commission, the parties shall be represented by plenipotentiary delegates or by agents, who shall serve as intermediaries between them and the Commission. The parties and the Commission may use the services of technical advisers and experts.

Article XXV. The Commission shall conclude its work within a period of six months from the date of its installation; but the parties may, by mutual agreement, extend the period.

Article XXVI. If, in the opinion of the parties, the controversy relates exclusively to questions of fact, the Commission shall limit itself to investigating such questions, and shall conclude its activities with an appropriate report.

Article XXVII. If an agreement is reached by conciliation, the final report of the Commission shall be limited to the text of the agreement and shall be published after its transmittal to the parties, unless the parties decide otherwise. If no agreement is reached, the final report shall contain a summary of the work of the Commission; it shall be delivered to the parties, and shall be published after the expiration of six months unless the parties decide otherwise. In both cases, the final report shall be adopted by a majority vote.

Article XXVIII. The reports and conclusions of the Commission of Investigation and Conciliation shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

Article XXIX. The Commission of Investigation and Conciliation shall transmit to each of the parties, as well as to the Pan American Union, certified copies of the minutes of its proceedings. These minutes shall not be published unless the parties so decide.

Article XXX. Each member of the Commission shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree thereon, the Council of the Organization shall determine the remuneration. Each government shall pay its own expenses and an equal share of the common expenses of the Commission, including the aforementioned remunerations.

CHAPTER FOUR

JUDICIAL PROCEDURE

Article XXXI. In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

(a) The interpretation of a treaty;
(b) Any question of international law;
(c) The existence of any fact which, if established, would constitute the breach of an international obligation;
(d) The nature or extent of the reparation to be made for the breach of an international obligation.

Article XXXII. When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute.

Article XXXIII. If the parties fail to agree as to whether the Court has jurisdiction over the controversy, the Court itself shall first decide that question.

Article XXXIV. If the Court, for the reasons set forth in Articles V, VI and VII of this Treaty, declares itself to be without jurisdiction to hear the controversy, such controversy shall be declared ended.

Article XXXV. If the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the High Contracting Parties obligate themselves to submit it to arbitration, in accordance with the provisions of Chapter Five of this Treaty.

Article XXXVI. In the case of controversies submitted to the judicial procedure to which this Treaty refers, the decision shall devolve upon the full Court, or, if the parties so request, upon a special chamber in conformity with

Article 26 of the Statute of the Court. The parties may agree, moreover, to have the controversy decided *ex aequo et bono*.

Article XXXVII. The procedure to be followed by the Court shall be that established in the Statute thereof.

CHAPTER FIVE

PROCEDURE OF ARBITRATION

Article XXXVIII. Notwithstanding the provisions of Chapter Four of this Treaty, the High Contracting Parties may, if they so agree, submit to arbitration differences of any kind, whether juridical or not, that have arisen or may arise in the future between them.

Article XXXIX. The Arbitral Tribunal to which a controversy is to be submitted shall, in the cases contemplated in Articles XXXV and XXXVIII of the present Treaty, be constituted in the following manner, unless there exists an agreement to the contrary.

Article XL. (1) Within a period of two months after notification of the decision of the Court in the case provided for in Article XXXV, each party shall name one arbiter of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Council of the Organization. At the same time, each party shall present to the Council a list of ten jurists chosen from among those on the general panel of members of the Permanent Court of Arbitration of The Hague who do not belong to its national group and who are willing to be members of the Arbitral Tribunal.

(2) The Council of the Organization shall, within the month following the presentation of the list, proceed to establish the Arbitral Tribunal in the following manner:

(a) If the lists presented by the parties contain three names in common, such persons, together with the two directly named by the parties, shall constitute the Arbitral Tribunal;

(b) In case these lists contain more than three names in common, the three arbiters needed to complete the Tribunal shall be selected by lot;

(c) In the circumstances envisaged in the two preceding clauses, the five arbiters designated shall choose one of their number as presiding officer;

(d) If the lists contain only two names in common, such candidates and the two arbiters directly selected by the parties shall by common agreement choose the fifth arbiter, who shall preside over the Tribunal. The choice shall devolve upon a jurist on the aforesaid general panel of the Permanent Court of Arbitration of The Hague who has not been included in the lists drawn up by the parties;

(e) If the lists contain only one name in common, that person shall be a member of the Tribunal, and another name shall be chosen by lot from among the eighteen jurists remaining on the above-mentioned lists. The presiding officer shall be elected in accordance with the procedure established in the preceding clause;

(f) If the lists contain no names in common, one arbiter shall be chosen by lot from each of the lists; and the fifth arbiter, who shall act as presiding officer, shall be chosen in the manner previously indicated;

(g) If the four arbiters cannot agree upon a fifth arbiter within one month after the Council of the Organization has notified them of their appointment, each of them shall separately arrange the list of jurists in the order of their preference and, after comparison of the lists so formed, the person who first obtains a majority vote shall be declared elected.

Article XLI. The parties may by mutual agreement establish the Tribunal in the manner they deem most appropriate; they may even select a single arbiter, designating in such case a chief of state, an eminent jurist, or any court of justice in which the parties have mutual confidence.

Article XLII. When more than two States are involved in the same controversy, the States defending the same interests shall be considered as a single party. If they have opposing interests they shall have the right to increase the number of arbiters so that all parties may have equal representation. The presiding officer shall be selected by the method established in Article XL.

Article XLIII. The parties shall in each case draw up a special agreement clearly defining the specific matter that is the subject of the controversy, the seat of the Tribunal, the rules of procedure to be observed, the period within which the award is to be handed down, and such other conditions as they may agree upon among themselves.

If the special agreement cannot be drawn up within three months after the date of the installation of the Tribunal, it shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the parties.

Article XLIV. The parties may be represented before the Arbitral Tribunal by such persons as they may designate.

Article XLV. If one of the parties fails to designate its arbiter and present its list of candidates within the period provided for in Article XL, the other party shall have the right to request the Council of the Organization to establish the Arbitral Tribunal. The Council shall immediately urge the delinquent party to fulfill its obligations within an additional period of fifteen days, after which time the Council itself shall establish the Tribunal in the following manner:

(a) It shall select a name by lot from the list presented by the petitioning party.
(b) It shall choose, by absolute majority vote, two jurists from the general panel of the Permanent Court of Arbitration of The Hague who do not belong to the national group of any of the parties.
(c) The three persons so designated, together with the one directly chosen by the petitioning party, shall select the fifth arbiter, who shall act as presiding officer, in the manner provided for in Article XL.
(d) Once the Tribunal is installed, the procedure established in Article XLIII shall be followed.

Article XLVI. The award shall be accompanied by a supporting opinion, shall be adopted by a majority vote, and shall be published after notification thereof has been given to the parties. The dissenting arbiter or arbiters shall have the right to state the grounds for their dissent.

The award, once it is duly handed down and made known to the parties, shall settle the controversy definitively, shall not be subject to appeal, and shall be carried out immediately.

Article XLVII. Any differences that arise in regard to the interpretation or execution of the award shall be submitted to the decision of the Arbitral Tribunal that rendered the award.

Article XLVIII. Within a year after notification thereof, the award shall be subject to review by the same Tribunal at the request of one of the parties, provided a previously existing fact is discovered unknown to the Tribunal and to the party requesting the review, and provided the Tribunal is of the opinion that such fact might have a decisive influence on the award.

Article XLIX. Every member of the Tribunal shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree on the amount, the Council of the Organization shall determine the remuneration. Each government shall pay its own expenses and an equal share of the common expenses of the Tribunal, including the aforementioned remunerations.

CHAPTER SIX

FULFILLMENT OF DECISIONS

Article L. If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.

CHAPTER SEVEN

ADVISORY OPINIONS

Article LI. The parties concerned in the solution of a controversy may, by agreement, petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question.

The petition shall be made through the Council of the Organization of American States.

CHAPTER EIGHT

FINAL PROVISIONS

Article LII. The present Treaty shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original instrument shall be deposited in the Pan American Union, which shall transmit an authentic certified copy to each government for the purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union, which shall notify the signatory governments of the deposit. Such notification shall be considered as an exchange of ratifications.

Article LIII. This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their respective ratifications.

Article LIV. Any American State which is not a signatory to the present Treaty, or which has made reservations thereto, may adhere to it, or may withdraw its reservations in whole or in part, by transmitting an official instrument to the Pan American Union, which shall notify the other High Contracting Parties in the manner herein established.

Article LV. Should any of the High Contracting Parties make reservations concerning the present Treaty, such reservations shall, with respect to the State that makes them, apply to all signatory States on the basis of reciprocity.

Article LVI. The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the State denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.

The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification.

Article LVII. The present Treaty shall be registered with the Secretariat of the United Nations through the Pan American Union.

Article LVIII. As this Treaty comes into effect through the successive rectifications of the High Contracting Parties, the following treaties, conventions and protocols shall cease to be in force with respect to such parties:

Treaty to Avoid or Prevent Conflicts between the American States, of May 3, 1923;

General Convention of Inter-American Conciliation, of January 5, 1929;

General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of January 5, 1929;

Additional Protocol to the General Convention of Inter-American Conciliation, of December 26, 1933;

Anti-War Treaty of Non-Aggression and Conciliation, of October 10, 1933;

Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States, of December 23, 1936;

Inter-American Treaty on Good Offices and Mediation, of December 23, 1936;

Treaty on the Prevention of Controversies, of December 23, 1936.

Article LIX. The provisions of the foregoing Article shall not apply to procedures already initiated or agreed upon in accordance with any of the above-mentioned international instruments.

Article LX. The present Treaty shall be called the "*Pact of Bogotá*".

In witness whereof, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, sign the present Treaty, in the name of their respective Governments, on the dates appearing below their signatures.

Done at the City of Bogotá, in four texts, in the English, French, Portuguese and Spanish languages respectively, on the thirtieth day of April, nineteen hundred forty-eight.

AMERICAN TREATY ON PACIFIC SETTLEMENT ("PACT OF BOGOTA")

Signed at Bogotá, 30 April 1948, at the Ninth International Conference of American States

ENTRY INTO FORCE: 6 May 1949, in accordance with Article LIII of the Treaty.
DEPOSITORY: OAS General Secretariat (original instrument and ratifications).
TEXT: OAS, *Treaty Series*, Nos. 17 and 61.
UN REGISTRATION: 13 May 1949, No. 449, UN *Treaty Series*, Vol. 30.

Signatory countries	*Deposit of ratification*
[1] Argentina	
[2] Bolivia	
Brazil	16 November 1965
Chile	15 April 1974[a]
Colombia	6 November 1968
Costa Rica	6 May 1949
Cuba	
Dominican Republic	12 September 1950
[3] Ecuador	
El Salvador	11 September 1950[b]
Guatemala	
Haiti	28 March 1951
Honduras	7 February 1950
Mexico	23 November 1948
[4] Nicaragua	26 July 1950
Panama	25 April 1951
[5] Paraguay	27 July 1967
[6] Peru	26 May 1967[c]
[7] United States	
Uruguay	1 September 1955
Venezuela	

As this Treaty enters into force through the successive ratifications of the parties, the treaties, conventions and protocols mentioned in Article LVIII cease to be in force with respect to such parties.

1. *Argentina:*

(Reservations made at the time of signature)

The Delegation of the Argentine Republic, on signing the American Treaty on Pacific Settlement (Pact of Bogotá), makes reservations in regard to the following articles, to which it does not adhere:

(1) VII, concerning the protection of aliens;
(2) Chapter Four (Articles XXXI to XXXVII), Judicial Procedure;
(3) Chapter Five (Articles XXXVIII to XLIX), Procedure of Arbitration;
(4) Chapter Six (Article L), Fulfillment of Decisions.

Arbitration and judicial procedure have, as institutions, the firm adherence of the Argentine Republic, but the Delegation cannot accept the form in which the procedures for their application have been regulated, since, in its opinion, they should have been established only for controversies arising in the future and not originating in or having any relation to causes, situations or facts existing before the signing of this instrument. The compulsory execution of arbitral or judicial decisions and the limitation which prevents the States from judging for themselves in regard to matters that pertain to their domestic jurisdiction in accordance with Article V are contrary to Argentine tradition. The protection of aliens, who in the Argentine Republic are protected by its Supreme Law to the same extent as the nationals, is also contrary to that tradition.

2. *Bolivia:*

(Reservation made at the time of signature)

The Delegation of Bolivia makes a reservation with regard to Article VI, inasmuch as it considers that pacific procedures may also be applied to controversies arising from matters settled by arrangement between the parties, when the said arrangement affects the vital interests of a State.

3. *Ecuador:*

(Reservation made at the time of signature)

The Delegation of Ecuador, upon signing this Pact, makes an express reservation with regard to Article VI and also every provision that contradicts or is not in harmony with the principles proclaimed by or the stipulations contained in the Charter of the United Nations, the Charter of the Organization of American States, or the Constitution of the Republic of Ecuador.

4. *Nicaragua:*

(Reservation made at the time of signature)

The Nicaraguan Delegation, on giving its approval to the American Treaty on Pacific Settlement (Pact of Bogotá) wishes to record expressly that no provisions contained in the said Treaty may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated. Consequently, the signature of the Nicaraguan Delegation to the Treaty in question cannot be alleged as an acceptance of any arbitral decisions that Nicaragua has contested and the validity of which is not certain.

Hence the Nicaraguan Delegation reiterates the statement made on the 28th of the current month on approving the text of the above mentioned Treaty in Committee III.

5. *Paraguay:*

(Reservation made at the time of signature)

Paraguay stipulates the prior agreement of the parties as a prerequisite to the arbitration procedure established in this Treaty for every question of a non-juridical nature affecting national sovereignty and not specifically agreed upon in treaties now in force.

6. *Peru:*

(Reservations made at the time of signature)

1. Reservation with regard to the second part of Article V, because it considers that domestic jurisdiction should be defined by the State itself.
2. Reservation with regard to Article XXXIII and the pertinent part of

Article XXXIV, inasmuch as it considers that the exceptions of *res judicata*, resolved by settlement between the parties or governed by agreements and treaties in force, determine, in virtue of their objective and peremptory nature, the exclusion of these cases from the application of every procedure.

3. Reservation with regard to Article XXXV, in the sense that, before arbitration is resorted to, there may be, at the request of one of the parties, a meeting of the Organ of Consultation, as established in the Charter of the Organization of American States.

4. Reservation with regard to Article XLV, because it believes that arbitration set up without the participation of one of the parties is in contradiction with its constitutional provisions.

7. *United States:*

(Reservations made at the time of signature)

1. The United States does not undertake as the complainant State to submit to the International Court of Justice any controversy which is not considered to be properly within the jurisdiction of the Court.

2. The submission on the part of the United States of any controversy to arbitration, as distinguished from judicial settlement, shall be dependent upon the conclusion of a special agreement between the parties to the case.

3. The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory *ipso facto* and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court, and in force at the time of the submission of any case.

4. The Government of the United States cannot accept Article VII relating to diplomatic protection and the exhaustion of remedies. For its part, the Government of the United States maintains the rules of diplomatic protection, including the rule of exhaustion of local remedies by aliens, as provided by international law.

a. *Chile:*

(Reservation made at the time of ratification)

Chile considers that Article LV of the Pact, in the part that refers to the possibility that some of the Contracting States would make reservations, must be interpreted in the light of paragraph No. 2 of Resolution XXIX adopted at the Eighth International Conference of American States.

b. *El Salvador:*

Notified denunciation referred to in Article 56 of the Treaty on 26 November 1973.

c. *Nicaragua:*

(Reservations made at the time of ratification)

With the reservations made at the time of signature.

d. *Peru:*

(Reservations made at the time of ratification)

With the reservations made at the time of signature.

Annex 35

Traite americain de reglement pacifique ("Pacte de Bogota"). Official French Text

Au nom de leurs peuples, les gouvernements représentés à la IX^e Conférence internationale américaine ont décidé, conformément à l'article XXIII de la charte de l'Organisation des Etats américains, de signer le traité suivant:

CHAPITRE PREMIER

OBLIGATION GENERALE DE REGLER LES DIFFERENDS PAR DES MOYENS PACIFIQUES

Article I. Les Hautes Parties contractantes réaffirment solennellement les obligations qu'elles ont acceptées dans des conventions et des déclarations internationales antérieures ainsi que dans la Charte des Nations Unies; elles décident de s'abstenir de la menace, de l'emploi de la force ou de n'importe quel autre moyen de coercition pour régler leurs différends et de recourir, en toutes circonstances, à des moyens pacifiques.

Article II. Les Hautes Parties contractantes acceptent l'obligation de résoudre les différends internationaux à l'aide des procédures pacifiques régionales avant de recourir au Conseil de sécurité des Nations Unies.

En conséquence, au cas où surgirait, entre deux ou plusieurs Etats signataires, un différend qui, de l'avis de l'une des parties, ne pourrait être résolu au moyen de négociations directes suivant les voies diplomatiques ordinaires, les parties s'engagent à employer les procédures établies dans ce traité sous la forme et dans les conditions prévues aux articles suivants, ou les procédures spéciales qui, à leur avis, leur permettront d'arriver à une solution.

Article III. L'ordre des procédures pacifiques établi dans le présent traité ne signifie pas que les parties ne peuvent recourir à celle qu'elles considèrent le plus approprié à chaque cas, ni qu'elles doivent les suivre toutes, ni qu'il n'existe, sauf disposition expresse à cet égard, une préférence pour l'une d'elles.

Article IV. Lorsque l'une des procédures pacifiques aura été entamée, soit en vertu d'un accord entre les parties, soit en exécution du présent traité, ou d'un pacte antérieur, il ne pourra être recouru à aucune autre avant l'épuisement de celle déjà entamée.

Article V. Lesdites procédures ne pourront s'appliquer aux questions qui, par leur nature, relèvent de la compétence nationale des Etats. Si les parties ne tombent pas d'accord sur le fait que le différend est une question relevant de la compétence nationale, sur la demande de l'une quelconque d'entre elles, cette question préjudicielle sera soumise au jugement de la Cour internationale de Justice.

Article VI. Ces procédures ne pourront non plus s'appliquer ni aux questions déjà réglées au moyen d'une entente entre les parties, ou d'une décision arbitrale ou d'une décision d'un tribunal international, ni à celles régies par des accords ou traités en vigueur à la date de la signature du présent pacte.

Article VII. Les Hautes Parties contractantes s'engagent à ne pas produire de réclamations diplomatiques pour protéger leurs nationaux et à n'introduire, dans le même but, aucune action devant les juridictions internationales tant que lesdits nationaux n'auront pas épuisé les voies de recours par-devant les tribunaux locaux compétents de l'Etat en question.

Article VIII. Ni le recours aux moyens pacifiques de solution des différends, ni la recommandation de leur emploi ne pourront, en cas d'attaque armée, constituer un motif pour retarder l'exercice du droit de légitime défense individuelle ou collective prévu dans la Charte des Nations Unies.

CHAPITRE DEUX

PROCEDURE DES BONS OFFICES ET DE MEDIATION

Article IX. La procédure des bons offices consiste dans les démarches d'un ou de plusieurs gouvernements américains, ou d'un ou de plusieurs citoyens éminents de l'un quelconque des Etats américains étrangers à la controverse, en vue de rapprocher les parties en leur offrant la possibilité de trouver directement une solution adequate.

Article X. Dès que le rapprochement des parties aura été réalisé et que les négociations directes auront repris, la mission de l'Etat ou du citoyen qui avait offert ses bons offices ou acepté l'invitation de s'interposer sera considérée comme terminée; cependant, par accord des parties, ledit Etat ou ledit citoyen pourra être présent aux négociations.

Article XI. La procédure de médiation consiste à soumettre le différend soit à un ou plusieurs gouvernements américains, soit à un ou plusieurs citoyens éminents de l'un quelconque des Etats américains étrangers au différend. Dans l'un et l'autre cas le ou les médiateurs seront choisis d'un commun accord par les parties.

Article XII. Les fonctions du ou des médiateurs consisteront à assister les parties dans le règlement de leur différend de la manière la plus simple et la plus directe, en évitant les formalités et faisant en sorte de trouver une solution acceptable. Le médiateur s'abstiendra de faire aucun rapport et, en ce qui le concerne, les procédures seront strictement confidentielles.

Article XIII. Si après avoir convenu de se soumettre à la procédure de conciliation les Hautes Parties contractantes ne pouvaient parvenir, dans un délai de deux mois, à se mettre d'accord sur le choix du ou des médiateurs, ou si, une fois entamée ladite procédure de médiation, cinq mois s'écoulaient sans qu'une solution puisse être donnée au différend, les parties recourront sans retard à l'une quelconque des autres procédures de règlement pacifique prévues au présent traité.

Article XIV. Les Hautes Parties contractantes pourront, individuellement ou collectivement, offrir leur médiation, mais elles s'engagent à ne pas le faire tant que le différend demeure sujet à l'une des autres procédures prévues au présent traité.

CHAPITRE TROIS

PROCEDURE D'ENQUÊTE ET DE CONCILIATION

Article XV. La procédure d'enquête et de conciliation consiste à soumettre le différend à une commission d'enquête et de conciliation qui sera constituée conformément aux dispositions établies dans les articles suivants du présent traité et qui fonctionnera dans les limites qui y sont fixées ci-après.

Article XVI. La partie qui recourt à la procédure d'enquête et de conciliation sollicitera du Conseil de l'Organisation des Etats américains la convocation de la Commission d'enquête et de conciliation. Le Conseil, de son côté, prendra immédiatement les mesures nécessaires en vue de cette convocation.

Une fois reçue la demande de convocation de la Commission, le différend entre les parties demeure en suspens et celles-ci s'abstiendront de tout acte pouvant rendre difficile la conciliation. A cette fin, le Conseil de l'Organisation des Etats américains pourra, sur la demande de l'une des parties, faire des recommandations dans ce sens à ces dernières, tandis que la convocation est en voie de réalisation.

Article XVII. Les Hautes Parties contractantes pourront nommer, par accord bilatéral qui s'effectuera au moyen d'un simple échange de notes avec chacun des autres signataires, deux membres de la Commission d'enquête et de conciliation dont l'un seulement pourra être de leur propre nationalité. Le cinquième sera élu immédiatement, au moyen d'un commun accord par ceux déjà désignés et il remplira les fonctions de président.

L'une quelconque des Parties contractantes pourra remplacer les membres qu'elle aura désignés quelle que soit la nationalité de ceux-ci et elle devra, dans le même acte, désigner leurs remplaçants. Lorsqu'elle aura omis de le faire, la nouvelle nomination sera considérée comme n'ayant pas été faite. Les nominations et les remplacements en question devront être enregistrés à l'Union panaméricaine qui veillera à ce que l'effectif des commissions de cinq membres soit toujours au complet.

Article XVIII. Sans préjudice des dispositions de l'article précédent, l'Union panaméricaine établira un Cadre permanent de conciliateurs américains composé de la façon suivante:

a) chacune des Hautes Parties contractantes désignera, tous les trois ans, deux de leurs ressortissants jouissant de la meilleure réputation pour leur valeur, leur compétence et leur honorabilité;

b) l'Union panaméricaine s'informera de l'acceptation expresse des candidats et placera dans le Cadre des conciliateurs les noms de ceux qui auront donné leur agrément;

c) les gouvernements auront, à tout moment, la faculté de combler les vacances qui pourront se produire et de nommer à nouveau les mêmes membres.

Article XIX. En cas de différend entre deux ou plusieurs Etats américains qui n'auraient pas établi la commission visée à l'article 17, la procédure suivante devra être adoptée:

a) chacune des parties désignera du Cadre permanent des conciliateurs américains deux membres dont la nationalité devra être différente de la sienne;

b) ces quatre membres désigneront à leur tour un cinquième conciliateur étranger aux parties et qui sera également tiré du Cadre permanent;

c) si trente jours après que leur nomination a été notifiée aux quatre membres sus-indiqués, ces derniers ne sont pas parvenus à se mettre d'accord sur le choix d'un cinquième membre, chacun d'eux établira séparément une liste de conciliateurs choisis dans le Cadre permanent et énumérés par ordre de préférence. Et après comparaison des listes ainsi établies sera déclaré élu celui qui le premier aura réuni une majorité de voix. L'élu exercera les fonctions de président de la Commission.

Article XX. Le Conseil de l'Organisation des Etats américains, en convoquant la Commission d'enquête et de conciliation, fixera le lieu où elle doit se réunir. Par la suite, la Commission pourra déterminer le ou les endroits où elle doit exercer ses fonctions, en tenant compte des conditions les plus propres à la réalisation de ses travaux.

Article XXI. Lorsque le même différend existe entre plus de deux Etats, les Etats qui soutiennent le même point de vue seront considérés comme une même partie. Si leurs intérêts sont divergents, ils auront le droit d'augmenter le nombre des conciliateurs de façon à ce que toutes les parties aient une représentation égale. Le président sera élu conformément aux dispositions de l'article 19.

Article XXII. Il appartient à la Commission d'enquête et de conciliation d'éclaircir les points en litige et de s'efforcer d'amener celles-ci à un accord dans des conditions mutuellement acceptables. Dans le but de trouver une solution acceptable, la Commission procédera aux enquêtes qu'elle jugera nécessaires sur les faits qui ont donné naissance au différend.

Article XXIII. Il est du devoir des parties de faciliter les travaux de la Commission et de lui fournir, de la façon la plus large possible, tous les documents et renseignements utiles, et elles ont l'obligation d'employer les moyens dont elles disposent en vue de lui permettre de citer et entendre des témoins ou des experts, ou d'effectuer toutes autres démarches utiles, dans les limites de leurs territoires respectifs et en conformité avec leurs lois.

Article XXIV. Au cours des procédures devant la Commission, les parties se feront représenter par des délégués plénipotentiaires ou par des agents qui serviront d'intermédiaires entre elles et la Commission. Les parties et la Commission pourront avoir recours aux services de conseillers et experts techniques.

Article XXV. La Commission terminera ses travaux dans un délai de six mois à compter du jour de sa constitution; mais les parties pourront, d'un commun accord, proroger ce délai.

Article XXVI. Si, de l'opinion des parties, le différend se limite exclusivement à des questions de fait, la Commission se bornera à faire une enquête au sujet de celles-ci et terminera ses travaux en présentant son rapport.

Article XXVII. Au cas où un accord résulterait de la conciliation, la Commission, dans son rapport final, se bornera à reproduire le texte du règlement auquel sont parvenues les parties et ledit texte sera publié après avoir été remis aux parties, sauf si ces dernières en décident autrement. Au cas contraire, le rapport final contiendra un résumé des travaux effectués par la Commission; il sera remis aux parties et publié dans un délai de six mois, à moins que celles-ci en décident autrement. Dans l'un et l'autre cas, le rapport final sera adopté à la majorité des voix.

Article XXVIII. Les rapports et conclusions de la Commission d'enquête et de conciliation n'auront aucun caractère obligatoire pour les parties ni en ce qui concerne l'exposition des faits ni en ce qui concerne les questions de droit; ils n'auront d'autre caractère que celui de recommandations soumises à la considération des parties pour faciliter le règlement amical du différend.

Article XXIX. La Commission d'enquête et de conciliation remettra à chacune des parties, ainsi qu'à l'Union panaméricaine, des copies certifiées des actes de ses travaux. Ces actes ne seront publiés qu'au moment où les parties en auront ainsi décidé.

Article XXX. Chacun des membres de la Commission recevra une compensation pécunaire dont le montant sera fixé d'un commun accord entre les parties. En cas de désaccord de celles-ci, le Conseil de l'Organisation en fixera le montant. Chacun des gouvernements aura à sa charge ses propres frais et une partie égale des dépenses communes de la Commission, celles-ci comprenant les compensations prévues précédemment.

CHAPITRE QUATRE

PROCEDURE JUDICIAIRE

Article XXXI. Conformément au paragraphe 2 de l'article 36 du Statut de la Cour internationale de Justice, les Hautes Parties contractantes en ce qui concerne tout autre Etat américain déclarent reconnaître comme obligatoire de plein droit, et sans convention spéciale tant que le présent traité restera en vigueur, la juridiction de la Cour sur tous les différends d'ordre juridique surgissant entre elles et ayant pour objet:

a) l'interprétation d'un traité;
b) toute question de droit international;
c) l'existence de tout fait qui, s'il était établi, constituerait la violation d'un engagement international;
d) La nature ou l'étendue de la réparation qui découle de la rupture d'un engagement international.

Article XXXII. Lorsque la procédure de conciliation établie précédemment, conformément à ce traité ou par la volonté des parties, n'aboutit pas à une solution et que ces dites parties n'ont pas convenu d'une procédure arbitrale, l'une quelconque d'entre elles aura le droit de porter la question devant la Cour internationale de Justice de la façon établie par l'article 40 de son Statut. La compétence de la Cour restera obligatoire, conformément au paragraphe 1 *a)* de l'article 36 du même Statut.

Article XXXIII. Au cas où les parties ne se mettraient pas d'accord sur la compétence de la Cour au sujet du litige, la Cour elle-même décidera au préalable de cette question.

Article XXXIV. Si, pour les motifs indiqués aux articles 5, 6 et 7 de ce traité, la Cour se déclarait incompétente pour juger le différend, celui-ci sera déclaré terminé.

Article XXXV. Si, pour une raison quelconque, la Cour se déclarait incompétente pour juger un différend et prendre ane décision à son sujet, les Hautes Parties contractantes s'engagent à soumettre celui-ci à l'arbitrage, conformément aux dispositions du chapitre 5 du présent traité.

Article XXXVI. En cas de différends soumis à la procédure de règlement judiciaire envisagée dans ce traité, la Cour prendra sa décision en séance plénière, ou, si les parties le demandent, en chambre spéciale, conformément à l'article 26 de son Statut. De cette façon, les parties pourront convenir que le conflit est jugé *ex acquo et bono*.

Article XXXVII. La procédure que devra suivre la Cour est celle fixée par son Statut.

CHAPITRE CINQ

PROCEDURE D'ARBITRAGE

Article XXXVIII. Outre ce qui est établi dans le chapitre 4 de ce traité, les Hautes Parties contractantes auront la faculté de soumettre à l'arbitrage, après accord entre elles, les différends d'ordre quelconque, juridiques ou non, qui auront surgi ou seraient appelés à surgir entre elles par la suite.

Article XXXIX. Le tribunal d'arbitrage appelé à connaître du différend dans les cas visés aux articles 35 et 38 de ce traité sera, à moins d'accord contraire, constitué de la façon indiquée ci-après.

Article XL. 1) Dans un délai de deux mois, à compter de la notification de la décision de la Cour, dans le cas prévu à l'article 35, chacune des parties désignera un arbitre d'une compétence reconnue en matière de droit international et jouissant d'une haute réputation morale et elle fera part de son choix au Conseil de l'Organisation. En temps voulu, elle présentera à ce même Conseil une liste de dix juristes choisis parmi ceux qui composent la liste générale des membres de la Cour permanente d'arbitrage de La Haye, n'appartenant pas à son groupe national et disposés à accepter cette fonction.

2) Dans le mois suivant la présentation des listes, le Conseil de l'Organisation procédera à la formation du tribunal d'arbitrage de la façon suivante:

a) les personnes dont les noms sont reproduits trois fois sur les listes présentées par les parties composeront, avec les deux membres désignés directement par les parties, le tribunal d'arbitrage;
b) au cas où plus de trois personnes se trouveraient dans la situation visée au paragraphe précédent, les trois arbitres qui doivent compléter le tribunal seront choisis par tirage au sort;
c) dans les cas prévus aux deux paragraphes précédents, les cinq arbitres désignés choisiront entre eux leur président;
d) si deux noms seulement se trouvaient dans le cas envisagé par le paragraphe *a)* du présent article, les candidats auxquels ils s'appliquent et les deux arbitres choisis directement par les parties éliront d'un commun accord le cinquième arbitre qui présidera le tribunal. Le choix devra se faire parmi les juristes de la même liste générale de la Cour permanente d'arbitrage de La Haye et porter sur un arbitre qui n'était pas désigné dans les listes préparées par les parties;
e) si les listes ne présentent qu'un seul nom commun, cette personne fera partie du tribunal et un autre arbitre sera choisi au moyen d'un tirage au sort parmi les dix-huit juristes restants des listes mentionnées. Le président sera élu conformément à la procédure établie au paragraphe précédent;
f) au cas où aucune concordance n'existerait entre les listes, deux arbitres seront tirés de chacune d'elles au moyen d'un tirage au sort; le cinquième arbitre sera élu de la manière indiquée précédemment, et il exercera les fonctions de président;
g) si les quatre arbitres ne peuvent se mettre d'accord sur le choix d'un cinquième arbitre dans un délai d'un mois à partir de la date à laquelle le Conseil de l'Organisation leur a fait part de leur nomination, chacun d'eux établira séparément, et en disposant les noms par ordre de préférence, la liste des juristes et, après comparaison des listes ainsi formées, sera déclaré élu celui qui réunit le plus grand nombre de votes.

Article XLI. Les parties pourront, d'un commun accord, constituer le tribunal de la manière jugée par elles la plus appropriée. Elles pourront même choisir un seul arbitre, désignant en pareil cas un chef d'Etat, un juriste éminent ou n'importe quel tribunal de justice dans lequel elles ont la même confiance.

Article XLII. Lorsque plus de deux Etats sont parties au même différend, ceux qui défendent des intérêts semblables seront considérés comme une seule partie. Si leurs intérêts sont opposés, ils auront le droit d'augmenter le nombre des arbitres de telle façon que toutes les parties aient une représentation égale. Le président sera élu conformément aux dispositions de l'article 40.

Article XLIII. Les parties établiront dans chaque cas le compromis qui devra définir clairement le point spécifique qui fait l'objet du différend, désigner le siège du tribunal, fixer les règles à observer au cours de la procédure, déterminer le délai dans lequel le jugement doit être prononcé et les autres conditions dont elles conviennent entre elles.

Au cas où un accord ne serait pas obtenu, relativement au compromis, dans un délai de trois mois à compter de la date de l'installation du tribunal, la Cour internationale de Justice formulera un compromis obligatoire pour les parties, au moyen de la procédure sommaire.

Article XLIV. Les parties peuvent se faire représenter devant le tribunal d'arbitrage par les personnes qu'elles jugent convenable de désigner.

Article XLV. Au cas où, dans le délai prévu à l'article 40, l'une des parties ne désignerait pas son arbitre et ne présenterait pas sa liste de candidats, l'autre partie aurait le droit de demander au Conseil de l'Organisation de constituer le tribunal d'arbitrage. Le Conseil invitera immédiatement la partie défaillante à remplir les obligations précitées dans un délai additionnel de quinze jours à l'échéance duquel le même Conseil procédera à l'établissement du tribunal de la façon suivante:

a) il tirera au sort un nom parmi ceux contenus dans la liste présentée par la partie requérante;
b) il choisira, de la liste générale de la Cour permanente d'arbitrage de La Haye et à la majorité absolue des voix, deux juristes dont aucun ne devra appartenir au groupe national de l'une des parties;
c) les trois personnes ainsi désignées, avec celles choisies directement par la partie requérante, éliront, conformément aux dispositions de l'article 40, le cinquième arbitre qui exercera les fonctions de président;
d) Le tribunal une fois installé, la procédure fixée à l'article 43 sera suivie.

Article XLVI. La décision arbitrale devra être motivée, adoptée à la majorité des voix et publiée après que notification en aura été faite aux parties. Le ou les arbitres dissidents pourront formuler les motifs de leur désaccord.

La décision, dûment prononcée et notifiée aux parties, réglera définitivement le différend, sera sans appel et devra recevoir exécution immédiate.

Article XLVII. Les différences qui naissent relativement à l'interprétation et l'exécution de la décision arbitrale seront portées devant le tribunal d'arbitrage qui a prononcé le jugement.

Article XLVIII. Dans l'année suivant sa notification, la décision arbitrale pourra donner lieu à une revision devant le même tribunal qui l'a rendue si l'une des parties le demande toutes les fois que se découvrira un fait, antérieur au jugement, qui était ignoré du tribunal et du demandeur en revision, et qui au surplus est susceptible, dans l'opinion du tribunal, d'exercer une influence décisive sur la sentence arbitrale.

Article XLIX. Chacun des membres du tribunal recevra une compensation pécuniaire, dont le montant sera fixé par l'accord des parties. Si les parties ne se sont pas entendues sur ce point le Conseil de l'Organisation leur indiquera le montant à accorder. Chacun des gouvernements aura à sa charge ses propres frais et une partie égale des dépenses communes du tribunal, dans lesquelles seront comprises les compensations précédemment prévues.

CHAPITRE SIX

MISE A EXECUTION DES DECISIONS

Article L. Si l'une des Hautes Parties contractantes ne remplit pas les obligations découlant d'un jugement de la Cour internationale de Justice ou d'un jugement arbitral, l'autre ou les autres parties intéressées, avant de recourir au Conseil de sécurité des Nations Unies, demanderont une réunion de consultation des ministres des relations extérieures afin que celle-ci convienne des mesures à prendre en vue d'assurer l'exécution de la décision juridique ou arbitrale.

CHAPITRE SEPT

AVIS CONSULTATIFS

Article LI. Les parties intéressées à la solution d'un différend pourront, d'un commun accord, demander à l'Assemblée générale ou au Conseil de sécurité des Nations Unies de solliciter l'avis consultatif de la Cour internationale de Justice sur une question juridique quelconque.

Le pétition se fera par l'intermédiaire du Conseil de l'Organisation des Etats américains.

CHAPITRE HUIT

DISPOSITIONS FINALES

Article LII. Le présent traité sera ratifié par les Hautes Parties contractantes conformément à la procédure prévue par leur constitution. L'instrument original sera deposé à l'Union panaméricaine qui, à cette fin, en enverra copie certifiée authentique aux gouvernements. Les instruments de ratification seront déposés aux archives de l'Union panaméricaine laquelle en notifiera le dépôt aux gouvernements signataires. Cette notification sera considérée comme un échange de ratification.

Article LIII. Le présent traité entrera en vigueur pour les Hautes Parties contractantes suivant l'ordre de dépôt de leurs ratifications respectives.

Article LIV. Tout Etat américain non signataire de ce traité ou qui aura fait des réserves à son sujet pourra y adhérer ou renoncer à la totalité ou partie de ses réserves, au moyen d'un instrument officiel adressé à l'Union panaméricaine qui en notifiera les Hautes Parties contractantes de la façon déterminée au présent traité.

Article LV. Si l'une des Hautes Parties contractantes fait des réserves au présent traité, ces réserves, à titre de réciprocité, s'appliqueront à tous les Etats signataires en ce qui concerne l'Etat qui les a faites.

Article LVI. La durée du présent traité sera indéfinie, mais il pourra être dénoncé moyennant un préavis d'un an; passé ce délai il cessera de produire ses effets par rapport à la partie qui l'a dénoncé, et demeurera en vigueur en ce qui concerne les autres signataires. L'avis de dénonciation sera adressé à l'Union panaméricaine qui le transmettra aux autres Parties contractantes.

La dénonciation n'aura aucun effet sur les procédures en cours entamées avant la transmission de l'avis en question.

Article LVII. Ce traité sera enregistré au Secrétariat général des Nations Unies par les soins de l'Union panaméricaine.

Article LVIII. Les traités, conventions et protocoles ci-après énumérés cesseront de produire leurs effets par rapport aux Hautes Parties contractantes au fur et à mesure que le présent traité entrera en vigueur en ce qui les concerne au moyen de leurs ratifications successives:

traité pour éviter ou prévenir les conflits entre les Etats américains du 3 mai 1923;
convention générale de conciliation interaméricaine du 5 janvier 1929;
traité général d'arbitrage interaméricain et protocole additionnel d'arbitrage progressif du 5 janvier 1929;
protocole additionnel à la convention générale de conciliation interaméricaine du 26 décembre 1933;
traité pacifique de non-agression et de conciliation du 10 octobre 1933;
convention pour coordonner, développer et assurer l'application des traités conclus entre les Etats américains du 23 décembre 1936;
traité interaméricain sur les bons offices et la médiation du 23 décembre 1936;
traité relatif à la prévention des différends du 23 décembre 1936.

Article LIX. Les dispositions de l'article précédent ne s'appliqueront pas aux procédures déjà entamées ou réglées conformément à l'un des instruments internationaux déjà mentionnés.

Article LX. Ce traité aura pour nom: «*Pacte de Bogotá.*»

En foi de quoi, les plénipotentiaires soussignés, après avoir déposé leurs pleins pouvoirs qui ont été trouvés en bonne et due forme, signent ce traité au nom de leurs gouvernements respectifs, aux dates mentionnées en regard de leur signature.

Fait à Bogotá, en quatre originaux, l'un en anglais, l'un en espagnol, l'un en français et le quatrième en portugais, le 30 avril, mil neuf cent quarante-huit.

Réserves

Argentine

«La délégation de la République argentine, en signant le traité américain de règlement pacifique (pacte de Bogotá), formule des réserves au sujet des articles suivants, auxquels elle n'a pas donné son adhésion:

1) article VII relatif à la protection des étrangers;
2) chapitre quatre (article XXXI à article XXXVII). Procédure de règlement judiciaire;
3) chapitre cinq (article XXXVIII à article XLIX). Procédure d'arbitrage;
4) chapitre six (article L). Mise à exécution des décisions.

L'arbitrage et le règlement judiciaire possèdent, en tant qu'institutions, la ferme adhésion de la République de l'Argentine, mais la délégation ne peut accepter la façon dont se trouvent réglementées leurs procédures de mise en application, car, à son avis, elles devraient seulement être établies pour les différends susceptibles de se produire dans l'avenir, ne puisant leur source dans aucun fait, cause ou situation antérieurs à la signature de cet instrument et n'ayant aucun rapport avec ces derniers. L'exécution obligatoire des décisions arbitrales ou judiciaires et la limitation établie qui empêche les Etats de trancher eux-mêmes les questions relevant de leur compétence nationale, conformément à l'article V, sont contraires à la tradition de l'Argentine. Est également contraire à cette tradition la protection des étrangers qui, dans la République argentine sont protégés, de la même façon que les nationaux, par la loi suprême.»

Bolivie

«La délégation de Bolivie formule une réserve en ce qui concerne l'article VI, car elle estime que les procédures pacifiques peuvent également s'appliquer aux différends relatifs à des questions résolues par arrangement entre les parties, lorsque pareil arrangement touche aux intérêts vitaux d'un Etat.»

Equateur

«La délégation de l'Equateur, en souscrivant à ce pacte, formule une réserve expresse relativement à l'article VI et à toute disposition qui viole les principes proclamés ou les stipulations contenues dans la Charte des Nations Unies, dans la Charte de l'Organisation des Etats américains ou dans la Constitution de la République de l'Equateur, ou qui n'est pas en harmonie avec ceux-ci.»

Etats-Unis d'Amérique

«1. Les Etats-Unis d'Amérique ne s'engagent pas, en cas de conflit dans lequel ils se considèrent comme partie lésée, à soumettre à la Cour internationale de Justice un différend qui ne relève pas proprement de la compétence de la Cour.

2. La soumission de la part des Etats-Unis d'Amérique d'un différend quelconque à l'arbitrage, et non au règlement judiciaire, dépendra de la conclusion d'un accord spécial entre les parties intéressées.

3. L'acceptation par les Etats-Unis d'Amérique de la juridiction de la Cour internationale de Justice comme obligatoire *ipso facto* et sans accord spécial, telle que cette juridiction est établie au présent traité, se trouve déterminée par toute limitation de juridiction et autre catégorie de limitation contenues dans les déclarations faites par les Etats-Unis conformément à l'article 36, paragraphe 4, du Statut de la Cour, et qui sont en vigueur au moment de l'étude d'un cas déterminé.

4. Le Gouvernement des Etats-Unis d'Amérique ne peut accepter l'article VII relatif à la protection diplomatique et à l'épuisement des ressources. Pour sa part, le Gouvernement des Etats-Unis d'Amérique maintient les règles de la protection diplomatique, y compris la règle de l'épuisement des ressources locales pour les étrangers, ainsi qu'il est réglé par le droit international.»

Paraguay

«La délégation du Paraguay formule la réserve suivante:

Le Paraguay soumet à l'accord préalable des parties la procédure arbitrale établie dans ce protocole au sujet de toute question de caractère non juridique qui touche à la souveraineté nationale et dont il n'est pas expressément convenu dans les traités actuellement en vigueur.»

Pérou

«La délégation du Pérou formule les réserves suivantes:

1. Réserve à la deuxième partie de l'article V, car elle estime que la juridiction intérieure doit être fixée par l'Etat lui-même.

2. Réserve à l'article XXXIII et la partie que de droit de l'article XXXIV car elle estime que les exceptions de la chose jugée résolue au moyen d'un accord entre les parties ou régie par les accords ou traités en vigueur empêchent, en raison de leur nature objective et péremptoire, l'application à ces cas de toute procédure.

3. Réserve à l'article XXXV parce que, avant qu'il soit recouru à l'arbitrage, la réunion de l'organe de consultation peut être convoquée, sur la demande d'une partie, ainsi que l'établit la charte de l'Organisation des Etats américains.

4. Réserve à l'article XLV car elle estime que l'emploi de l'arbitrage sans intervention d'une partie se trouve en contradiction avec ses préceptes constitutionnels.»

Nicaragua

«La délégation du Nicaragua, tout en donnant son approbation au traité américain de reglement pacifique (pacte de Bogotá), désire déclarer dans l'acte qu'aucune des dispositions contenues dans ledit traité ne peut détourner le Gouvernement du Nicaragua de la position qu'il a toujours prise en ce qui concerne les décisions arbitrales dont la validité a été consestée en se basant sur les principes du droit international, lequel permet clairement de contester des décisions arbitrales jugées nulles ou viciées. En conséquence, la délégation du Nicaragua, en donnant sa signature au traité, formule une réserve au sujet de l'acceptation des décisions arbitrales que le Nicaragua a contestées et dont la validité n'a pas été établie.

La délégation du Nicaragua réitère de cette façon la déclaration qu'elle a faite le 28 courant en approuvant le texte du traité mentionné de la Troisième Commission.»

Annex 36

TRATADO AMERICANO DE SOLUCIONES PACIFICAS ("PACTO DE BOGOTÁ"), OFFICIAL SPANISH TEXT

En nombre de sus pueblos, los Gobiernos representados en la IX Conferencia Internacional Americana, han resuelto, en cumplimiento del artículo XXIII de la Carta de la Organización de los Estados Americanos, celebrar el siguiente Tratado:

CAPITULO PRIMERO

OBLIGACION GENERAL DE RESOLVER LAS CONTROVERSIAS POR MEDIOS PACIFICOS

Artículo I. Las Altas Partes Contratantes, reafirmando solemnemente sus compromisos contraídos por anteriores convenciones y declaraciones internacionales así como por la Carta de las Naciones Unidas, convienen en abstenerse de la amenaza, del uso de la fuerza o de cualquier otro medio de coacción para el arreglo de sus controversias y en recurrir en todo tiempo a procedimientos pacíficos.

Artículo II. Las Altas Partes Contratantes reconocen la obligación de resolver las controversias internacionales por los procedimientos pacíficos regionales antes de llevarlas al Consejo de Seguridad de las Naciones Unidas.

En consecuencia, en caso de que entre dos o más Estados signatarios se suscite una controversia que, en opinión de las partes, no pueda ser resuelta por negociaciones directas a través de los medios diplomáticos usuales, las partes se comprometen a hacer uso de los procedimientos establecidos en este Tratado en la forma y condiciones previstas en los artículos siguientes, o bien de los procedimientos especiales que, a su juicio, les permitan llegar a una solución.

Artículo III. El orden de los procedimientos pacíficos establecido en el presente Tratado no significa que las partes no puedan recurrir al que consideren más apropiado en cada caso, ni que deban seguirlos todos, ni que exista, salvo disposición expresa al respecto, prelación entre ellos.

Artículo IV. Iniciado uno de los procedimientos pacíficos, sea por acuerdo de las partes, o en cumplimiento del presente Tratado, o de un pacto anterior, no podrá incoarse otro procedimiento antes de terminar aquél.

Artículo V. Dichos procedimientos no podrán aplicarse a las materias que por su esencia son de la jurisdicción interna del Estado. Si las partes no estuvieren de acuerdo en que la controversia se refiere a un asunto de jurisdicción interna, a solicitud de cualquiera de ellas esta cuestión previa será sometida a la decisión de la Corte Internacional de Justicia.

Artículo VI. Tampoco podrán aplicarse dichos procedimientos a los asuntos ya resueltos por arreglo de las partes, o por laudo arbitral, o por sentencia de un tribunal internacional, o que se hallen regidos por acuerdos o tratados en vigencia en la fecha de la celebración del presente Pacto.

Artículo VII. Las Altas Partes Contratantes se obligan a no intentar reclamación diplomática para proteger a sus nacionales, ni a iniciar al efecto una controversia ante la jurisdicción internacional, cuando dichos nacionales hayan tenido expeditos los medios para acúdir a los tribunales domésticos competentes del Estado respectivo.

Artículo VIII. El recurso a los medios pacíficos de solución de las controversias, o la recomendación de su empleo, no podrán ser motivo, en caso de ataque armado, para retardar el ejercicio del derecho de legítima defensa individual o colectiva, previsto en la Carta de las Naciones Unidas.

CAPITULO SEGUNDO

PROCEDIMIENTOS DE BUENOS OFICIOS Y DE MEDIACIÓN

Artículo IX. El procedimiento de los Buenos Oficios consiste en la gestión de uno o más Gobiernos Americanos o de uno o más ciudadanos eminentes de cualquier Estado Americano, ajenos a la controversia, en el sentido de aproximar a las partes, proporcionándoles la posibilidad de que encuentren directamente una solución adecuada.

Artículo X. Una vez que se haya logrado el acercamiento de las partes y que éstas hayan reanudado las negociaciones directas quedará terminada la gestión del Estado o del ciudadano que hubiere ofrecido sus Buenos Oficios o aceptado la invitación a interponerlos; sin embargo, por acuerdo de las partes, podrán aquéllos estar presentes en las negociaciones.

Artículo XI. El procedimiento de mediación consiste en someter la controversia a uno o más gobiernos americanos, o a uno o más ciudadanos eminentes de cualquier Estado Americano extraños a la controversia. En uno y otro caso el mediador o los mediadores serán escogidos de común acuerdo por las partes.

Artículo XII. Las funciones del mediador o mediadores consistirán en asistir a las partes en el arreglo de las controversias de la manera más sencilla y directa, evitando formalidades y procurando hallar una solución aceptable. El mediador se abstendrá de hacer informe alguno y, en lo que a él atañe, los procedimientos serán absolutamente confidenciales.

Artículo XIII. En el caso de que las Altas Partes Contratantes hayan acordado el procedimiento de mediación y no pudieren ponerse de acuerdo en el plazo de dos meses sobre la elección del mediador o mediadores; o si iniciada la mediación transcurrieren hasta cinco meses sin llegar a la solución de la controversia, recurrirán sin demora a cualquiera de los otros procedimientos de arreglo pacífico establecidos en este Tratado.

Artículo XIV. Las Altas Partes Contratantes podrán ofrecer su mediación, bien sea individual o conjuntamente; pero convienen en no hacerlo mientras la controversia esté sujeta a otro de los procedimientos establecidos en el presente Tratado.

CAPITULO TERCERO

PROCEDIMIENTO DE INVESTIGACION CONCILIACION

Artículo XV. El procedimiento de investigación y conciliación consiste en someter la controversia a una comisión de investigación y conciliación que será constituida con arreglo a las disposiciones establecidas en los subsecuentes artículos del presente Tratado, y que funcionará dentro de las limitaciones en él señaladas.

Artículo XVI. La parte que promueva el procedimiento de investigación y conciliación pedirá al Consejo de la Organización de los Estados Americanos que convoque la Comisión de Investigación y Conciliación. El Consejo, por su parte, tomará las providencias inmediatas para convocarla.

Recibida la solicitud para que se convoque la Comisión quedará inmediatamente suspendida la controversia entre las partes y éstas se abstendrán de todo acto que pueda dificultar la conciliación. Con este fin, el Consejo de la Organización de los Estados Americanos, podrá, a petición de parte mientras esté en trámite la convocatoria de la Comisión, hacerles recomendaciones en dicho sentido.

Artículo XVII. Las Altas Partes Contratantes podrán nombrar por medio de un acuerdo bilateral que se hará constar en un simple cambio de notas con cada uno de los otros signatarios, dos miembros de la Comisión de Investigación y Conciliación, de los cuales uno solo podrá ser de su propria nacionalidad. El quinto será elegido inmediatamente de común acuerdo por los ya designados y desempeñará las funciones de Presidente.

Cualquiera de las Partes Contratantes podrá reemplazar a los miembros que hubiere designado, sean éstos nacionales o extranjeros; y en el mismo acto deberá nombrar al sustituto. En caso de no hacerlo la remoción se tendrá por no formulada. Los nombramientos y sustituciones deberán registrarse en la Unión Panamericana que velará porque las Comisiones de cinco miembros estén siempre integradas.

Artículo XVIII. Sin perjuicio de lo dispuesto en el artículo anterior, la Unión Panamericana formará un Cuadro Permanente de Conciliadores Americanos que será integrado así:

a) Cada una de las Altas Partes Contratantes designará, por períodos de tres años, dos de sus nacionales que gocen de la más alta reputación por su ecuanimidad, competencia y honorabilidad.

b) La Unión Panamericana recabará la aceptación expresa de los candidatos y pondrá los nombres de las personas que le comuniquen su aceptación en del Cuadro de Conciliadores.

c) Los gobiernos podrán en cualquier momento llenar las vacantes que ocurran entre sus designados y nombrarlos nuevamente.

Artículo XIX. En el caso de que ocurriere una controversia entre dos o más Estados Americanos que no tuvieren constituída la Comisión a que se refiere el Artículo XVII, se observará el siguiente procedimiento:

a) Cada parte designará dos miembros elegidos del Cuadro Permanente de Conciliadores Americanos, que no pertenezcan a la nacionalidad del designante.

b) Estos cuatro miembros escogerán a su vez un quinto conciliador extraño a las partes, dentro del Cuadro Permanente.

c) Si dentro del plazo de treinta días después de haber sido notificados de su elección, los cuatro miembros no pudieren ponerse de acuerdo para escoger el quinto, cada uno de ellos formará separadamente la lista de conciliadores, tomándola del Cuadro Permanente en el orden de su preferencia; y después de comparar las listas así formadas se declarará electo aquél que primero reúna una mayoría de votos. El elegido ejercerá las funciones de Presidente de la Comisión.

Artículo XX. El Consejo de la Organización de los Estados Americanos al convocar la Comisión de Investigación y Conciliación determinará el lugar donde ésta haya de reunirse. Con posterioridad, la Comisión podrá determinar el lugar o lugares en donde deba funcionar, tomando en consideración las mayores facilidades para la realización de sus trabajos.

Artículo XXI. Cuando más de dos Estados estén implicados en la misma controversia, los Estados que sostengan iguales puntos de vista serán considerados como una sola parte. Si tuviesen intereses diversos tendrán derecho a aumentar el número de conciliadores con el objeto de que todas las partes tengan igual representación. El Presidente será elegido en la forma establecida en el artículo XIX.

Artículo XXII. Corresponde a la Comisión de Investigación y Conciliación esclarecer los puntos controvertidos, procurando llevar a las partes a un acuerdo en condiciones recíprocamente aceptables. La Comisión promoverá las investigaciones que estime necesarias sobre los hechos de la controversia, con el propósito de proponer bases aceptables de solución.

Artículo XXIII. Es deber de las partes facilitar los trabajos de la Comisión y suministrarle, de la manera más amplia posible, todos los documentos e informaciones útiles, así como también emplear los medios de que dispongan para permitirle que proceda a citar y oír testigos o peritos y practicar otras diligencias, en sus respectivos territorios y de conformidad con sus leyes.

Artículo XXIV. Durante los procedimientos ante la Comisión las partes serán representadas por Delegados Plenipotenciarios o por agentes que servirán de intermediarios entre ellas y la Comisión. Las partes y la Comisión podrán recurrir a los servicios de consejeros y expertos técnicos.

Artículo XXV. La Comisión concluirá sus trabajos dentro del plazo de seis meses a partir de la fecha de su constitución; pero las partes podrán, de común acuerdo, prorrogarlo.

Artículo XXVI. Si a juicio de las partes la controversia se concretare exclusivamente a cuestiones de hecho, la Comisión se limitará a la investigación de aquéllas y concluirá sus labores con el informe correspondiente.

Artículo XXVII. Si se obtuviere el acuerdo conciliatorio, el informe final de la Comisión se limitará a reproducir el texto del arreglo alcanzado y se publicará después de su entrega a las partes, salvo que éstas acuerden otra cosa. En caso contrario, el informe final contendrá un resumen de los trabajos efectuados por la Comisión; se entregará a las partes y se publicará después de un plazo de seis meses, a menos que éstas tomaren otra decisión. En ambos eventos, el informe final será adoptado por mayoría de votos.

Artículo XXVIII. Los informes y conclusiones de la Comisión de Investigación y Conciliación no serán obligatorios para las partes ni en lo relativo a la exposición de los hechos ni en lo concerniente a las cuestiones de derecho, y no revestirán otro carácter que el de recomendaciones sometidas a la consideración de las partes para facilitar el arreglo amistoso de la controversia.

Artículo XXIX. La Comisión de Investigación y Conciliación entregará a cada una de las partes, así como a la Unión Panamericana, copias certificadas de las actas de sus trabajos. Estas actas no serán publicadas sino cuando así lo decidan las partes.

Artículo XXX. Cada uno de los miembros de la Comisión recibirá una compensación pecuniaria cuyo monto será fijado de común acuerdo por las partes. Si éstas no la acordaren, la señalará el Consejo de la Organización. Cada uno de los gobiernos pagará sus propios gastos y una parte igual de las expensas comunes de la Comisión, comprendidas en éstas las compensaciones anteriormente previstas.

CAPITULO CUARTO

PROCEDIMIENTO JUDICIAL

Artículo XXXI. De conformidad con el inciso 2º del artículo 36 del Estatuto de la Corte Internacional de Justicia, las Altas Partes Contratantes declaran que reconocen respecto a cualquier otro Estado Americano como obligatoria *ipso facto*, sin necesidad de ningún convenio especial mientras esté vigente el presente Tratado, la jurisdicción de la expresada Corte en todas las controversias de orden jurídico que surjan entre ellas y que versen sobre:

a) La interpretación de un Tratado;
b) Cualquier cuestión de Derecho Internacional;
c) La existencia de todo hecho que, si fuere establecido, constituiría la violación de una obligación internacional;
d) La naturaleza o extensión de la reparación que ha de hacerse por el quebrantamiento de una obligación internacional.

Artículo XXXII. Cuando el procedimiento de conciliación anteriormente establecido conforme a este Tratado o por voluntad de las partes, no llegare a una solución y dichas partes no hubieren convenido en un procedimiento arbitral, cualquiera de ellas tendrá derecho a recurrir a la Corte Internacional de Justicia en la forma establecida en el artículo 40 de su Estatuto. La jurisdicción de la Corte quedará obligatoriamente abierta conforme al inciso 1º del artículo 36 del mismo Estatuto.

Artículo XXXIII. Si las partes no se pusieren de acuerdo acerca de la competencia de la Corte sobre el litigio, la propria Corte decidirá previamente esta cuestión.

Artículo XXXIV. Si la Corte se declarare incompetente para conocer de la controversia por los motivos señalados en los artículos V, VI y VII de este Tratado, se declarará terminada la controversia.

Artículo XXXV. Si la Corte se declarare incompetente por cualquier otro motivo para conocer y decidir de la controversia, las Altas Partes Contratantes se obligan a someterla a arbitraje, de acuerdo con las disposiciones del capítulo quinto de este Tratado.

Artículo XXXVI. En el caso de controversias sometidas al procedimiento judicial a que se refiere este Tratado, corresponderá su decisión a la Corte en pleno, o, si así lo solicitaren las partes, a una Sala Especial conforme al artículo 26 de su Estatuto. Las partes podrán convenir, asimismo, en que el conflicto se falle *ex-aequo et bono.*

Artículo XXXVII. El procedimiento a que deba ajustarse la Corte será el establecido en su Estatuto.

CAPITULO QUINTO

PROCEDIMIENTO DE ARBITRAJE

Artículo XXXVIII. No obstante lo establecido en el Capítulo Cuarto de este Tratado, las Altas Partes Contratantes tendrán la facultad de someter a arbitraje, si se pusieren de acuerdo en ello, las diferencias de cualquier naturaleza, sean o no jurídicas, que hayan surgido o surgieren en lo sucesivo entre ellas.

Artículo XXXIX. El Tribunal de Arbitraje, al cual se someterá la controversia en los casos de los artículos XXXV y XXXVIII de este Tratado se constituirá del modo siguiente, a menos de existir acuerdo en contrario.

Artículo XL. 1) Dentro del plazo de dos meses, contados desde la notificación de la decisión de la Corte, en el caso previsto en el artículo XXXV, cada una de las partes designará un árbitro de reconocida competencia en las cuestiones de derecho internacional, que goce de la más alta consideración moral, y comunicará esta designación al Consejo de la Organización. Al propio tiempo presentará al mismo Consejo una lista de diez juristas escogidos entre los que forman la nómina general de los miembros de la Corte Permanente de Arbitraje de La Haya, que no pertenezcan a su grupo nacional y que estén dispuestos a aceptar el cargo.

2) El Consejo de la Organización procederá a integrar, dentro del mes siguiente a la presentación de las listas, el Tribunal de Arbitraje en la forma que a continuación se expresa:

a) Si las listas presentadas por las partes coincidieren en tres nombres, dichas personas constituirán el Tribunal de Arbitraje con las dos designadas directamente por las partes.

b) En el caso en que la coincidencia recaiga en más de tres nombres, se determinarán por sorteo los tres árbitros que hayan de completar el Tribunal.

c) En los eventos previstos en los dos incisos anteriores, los cinco árbitros designados escogerán entre ellos su presidente.

d) Si hubiere conformidad únicamente sobre dos nombres, dichos candidatos y los dos árbitros seleccionados directamente por las partes, elegirán de común acuerdo el quinto árbitro que presidirá el Tribunal. La elección deberá recaer en algún jurista de la misma nómina general de la Corte Permanente de Arbitraje de La Haya, que no haya sido incluido en las listas formadas por las partes.

e) Si las listas presentaren un solo nombre común, esta persona formará parte del Tribunal y se sorteará otra entre los 18 juristas restantes en las mencionadas listas. El Presidente será elegido siguiendo el procedimiento establecido en el inciso anterior.

f) No presentándose ninguna concordancia en las listas, se sortearán sendos árbitros en cada una de ellas; y el quinto árbitro, que actuará como Presidente, será elegido de la manera señalada anteriormente.

g) Si los cuatro árbitros no pudieren ponerse de acuerdo sobre el quinto árbitro dentro del término de un mes contado desde la fecha en que el Consejo de la Organización les comunique su nombramiento, cada uno de ellos acomodará separadamente la lista de juristas en el orden de su preferencia y después de comparar las listas así formadas, se declarará elegido aquél que reúna primero una mayoría de votos.

Artículo XLI. Las partes podrán de común acuerdo constituir el Tribunal en la forma que consideren más conveniente, y aun elegir un árbitro único, designando en tal caso al Jefe de un Estado, a un jurista eminente o a cualquier tribunal de justicia en quien tengan mutua confianza.

Artículo XLII. Cuando más de dos Estados estén implicados en la misma controversia, los Estados que defiendan iguales intereses serán considerados como una sola parte. Si tuvieren intereses opuestos tendrán derecho a aumentar el número de árbitros para que todas las partes tengan igual representación. El Presidente se elegirá en la forma establecida en el artículo XL.

Artículo XLIII. Las partes celebrarán en cada caso el compromiso que defina claramente la materia específica objeto de la controversia, la sede del Tribunal, las reglas que hayan de observarse en el procedimiento, el plazo dentro del cual haya de pronunciarse el laudo y las demás condiciones que convengan entre sí.

Si no se llegare a un acuerdo sobre el compromiso dentro de tres meses contados desde la fecha de la instalación del Tribunal, el compromiso será formulado, con carácter obligatorio para las partes, por la Corte Internacional de Justicia, mediante el procedimiento sumario.

Artículo XLIV. Las partes podrán hacerse representar ante el Tribunal Arbitral por las personas que juzguen conveniente designar.

Artículo XLV. Si una de las partes no hiciere la designación de su árbitro y la presentación de su lista de candidatos, dentro del término previsto en el artículo XL, la otra parte tendrá el derecho de pedir al Consejo de la Organización que constituya el Tribunal de Arbitraje. El Consejo inmediatamente instará a la parte remisa para que cumpla esas obligaciones dentro de un término adicional de quince días, pasado el cual, el proprio Consejo integrará el Tribunal en la siguiente forma:

a) Sortará un nombre de la lista presentada por la parte requirente;
b) Escogerá por mayoría absoluta de votos dos juristas de la nómina general de la Corte Permanente de Arbitraje de La Haya, que no pertenezcan al grupo nacional de ninguna de las partes;
c) Las tres personas así designadas, en unión de la seleccionada directamente por la parte requirente, elegirán de la manera prevista en el artículo XL al quinto árbitro que actuará como Presidente;
d) Instalado el Tribunal se seguirá el procedimiento organizado en el artículo XLIII.

Artículo XLVI. El laudo será motivado, adoptado por mayoría de votos y publicado después de su notificación a las partes. El árbitro o árbitros disidentes podrán dejar testimonio de los fundamentos de su disidencia.

El laudo, debidamente pronunciado y notificado a las partes, decidirá la controversia definitivamente y sin apelación, y recibirá immediata ejecución.

Artículo XLVII. Las diferencias que se susciten sobre la interpretación o ejecución del laudo, serán sometidas a la decisión del Tribunal Arbitral que lo dictó.

Artículo XLVIII. Dentro del año siguiente a su notificación, el laudo será susceptible de revisión ante el mismo Tribunal, a pedido de una de las partes, siempre que se descubriere un hecho anterior a la decisión ignorado del Tribunal y de la parte que solicita la revisión, y además siempre que, a juicio del Tribunal, ese hecho sea capaz de ejercer una influencia decisiva sobre el laudo.

Artículo XLIX. Cada uno de los miembros del Tribunal recibirá una compensación pecuniaria cuyo monto será fijado de común acuerdo por las partes. Si éstas no la convinieren la señalará el Consejo de la Organización. Cada uno de los gobiernos pagará sus propios gastos y una parte igual de las expensas comunes del Tribunal, comprendidas en éstas las compensaciones anteriormente previstas.

CAPITULO SEXTO

CUMPLIMIENTO DE LAS DECISIONES

Artículo L. Si una de las Altas Partes Contratantes dejare de cumplir las obligaciones que le imponga un fallo de la Corte Internacional de Justicia o un laudo arbitral, la otra u otras partes interesadas, antes de recurrir al Consejo de Seguridad de las Naciones Unidas, promoverá una Reunión de Consulta de Ministros de Relaciones Exteriores a fin de que acuerde las medidas que convenga tomar para que se ejecute la decisión judicial o arbitral.

CAPITULO SEPTIMO

OPINIONES CONSULTIVAS

Artículo LI. Las partes interesadas en la solución de una controversia podrán, de común acuerdo, pedir a la Asamblea General o al Consejo de Seguridad de las Naciones Unidas que soliciten de la Corte Internacional de Justicia opiniones consultivas sobre cualquier cuestión jurídica.

La petición la harán por intermedio del Consejo de la Organización de los Estados Americanos.

CAPITULO OCTAVO

DISPOSICIONES FINALES

Artículo LII. El presente Tratado será ratificado por las Altas Partes Contratantes de acuerdo con sus procedimientos constitucionales. El instrumento original será depositado en la Unión Panamericana, que enviará copia certificada auténtica a los gobiernos para ese fin. Los instrumentos de ratificación serán depositados en los archivos de la Unión Panamericana, que notificará dicho depósito a los gobiernos signatarios. Tal notificación será considerada como canje de ratificaciones.

Artículo LIII. El presente Tratado entrará en vigencia entre las Altas Partes Contratantes en el orden en que depositen sus respectivas ratificaciones.

Artículo LIV. Cualquier Estado Americano que no sea signatario de este Tratado o que haya hecho reservas al mismo, podrá adherir a éste o abandonar en todo o en parte sus reservas, mediante instrumento oficial dirigido a la Unión Panamericana, que notificará a las otras Altas Partes Contratantes en la forma que aquí se establece.

Artículo LV. Si alguna de las Altas Partes Contratantes hiciere reservas respecto del presente Tratado, tales reservas se aplicarán en relación con el Estado que las hiciera a todos los Estados signatarios, a título de reciprocidad.

Artículo LVI. El presente Tratado regirá indefinidamente, pero podrá ser denunciado mediante aviso anticipado de un año, transcurrido el cual cesará en sus efectos para el denunciante, quedando subsistente para los demás signatarios. La denuncia será dirigida a la Unión Panamericana, que la transmitirá a las otras Partes Contratantes.

La denuncia no tendrá efecto alguno sobre los procedimientos pendientes iniciados antes de transmitido el aviso respectivo.

Artículo LVII. Este Tratado será registrado en la Secretaría General de las Naciones Unidas por medio de la Unión Panamericana.

Artículo LVIII. A medida que este Tratado entre en vigencia por las sucesivas ratificaciones de las Altas Partes Contratantes cesarán para ellas los efectos de los siguientes Tratados, Convenios y Protocolos:

Tratado para Evitar o Prevenir Conflictos entre los Estados Americanos del 3 de mayo de 1.923;

Convención General de Conciliación Interamericana del 5 de enero de 1.929;

Tratado General de Arbitraje Interamericano y Protocolo Adicional de Arbitraje Progresivo del 5 de enero de 1.929;

Protocolo Adicional a la Convención General de Conciliación Interamericana del 26 de diciembre de 1.933;

Tratado Antibélico de No Agresión y de Conciliación del 10 de octubre de 1.933;

Convención para Coordinar, Ampliar y Asegurar el Cumplimiento de los Tratados Existentes entre los Estados Americanos del 23 de diciembre de 1.936;

Tratado Interamericano sobre Buenos Oficios y Mediación del 23 de diciembre de 1.936.

Tratado Relativo a la Prevención de Controversias del 23 de diciembre de 1.936.

Artículo LIX. Lo dispuesto en el artículo anterior no se aplicará a los procedimientos ya iniciados o pactados conforme a alguno de los referidos instrumentos internacionales.

Artículo LX. Este Tratado se denominará *"Pacto de Bogotá"*.

En fe de lo cual, los Plenipotenciarios que suscriben, habiendo depositado sus pleno poderes, que fueron hallados en buena y debida forma, firman este Tratado, en nombre de sus respectivos Gobiernos, en las fechas que aparecen al pie de sus firmas.

Hecho en la ciudad de Bogotá, en cuatro textos, respectivamente, en las lenguas española, francesa, inglesa y portuguesa, a los 30 días del mes de abril de mil novecientos cuarenta y ocho.

Reservas

Argentina

"La Delegación de la República Argentina, al firmar el Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá), formula sus reservas sobre los siguientes artículos, a los cuales no adhiere:

1) VII, relativo a la protección de extranjeros;
2) Capítulo Cuarto (artículos XXXI a XXXVII), Procedimiento judicial;
3) Capítulo Quinto (artículos XXXVIII a XLIX), Procedimiento de Arbitraje;
4) Capítulo Sexto (artículo L), Cumplimiento de las decisiones.

El arbitraje y el procedimiento judicial cuentan, como instituciones, con la firme adhesión de la República Argentina, pero la Delegación no puede aceptar la forma en que se han reglamentado los procedimientos para su aplicación, ya que a su juicio debieron establecerse solamente para las controversias que se originen en el futuro y que no tengan su origen ni relación alguna con causas, situaciones o hechos pre-existentes a la firma de este instrumento. La ejecución compulsiva de las decisiones arbitrales o judiciales y la limitación que impide a los Estados juzgar por sí mismos acerca de los asuntos que pertenecen a su jurisdicción interna conforme al artículo V, son contrarios a la tradición argentina. Es también contraria a esa tradición la protección de los extranjeros, que en la República Argentina están amparados, en un mismo grado que los nacionales, por la Ley Suprema."

Bolivia

"La Delegación de Bolivia formula reserva al artículo VI, pues considera que los procedimientos pacíficos pueden también aplicarse a las controversias emergentes de asuntos resueltos por arreglo de las Partes, cuando dicho arreglo afecta intereses vitales de un Estado."

Ecuador

"La Delegación del Ecuador al suscribir este Pacto, hace reserva expresa del Artículo VI, y, además, de toda disposición que esté en pugna o no guarde armonía con los principios proclamados o las estipulaciones contenidas en la Carta de las Naciones Unidas, o en la Carta de la Organización de los Estados Americanos, o en la Constitución de la República del Ecuador."

Estados Unidos de América

"1. Los Estados Unidos de América no se comprometen, en caso de conflicto en que se consideren pare agraviada, a someter a la Corte Internacional de Justicia toda controversia que no se considere propriamente dentro de la jurisdicción de la Corte.

2. El planteo por parte de los Estados Unidos de América de cualquier controversia al arbitraje, a diferencia del arreglo judicial, dependerá de la conclusión de un acuerdo especial entre las partes interesadas.

3. La aceptación por parte de los Estados Unidos de América de la jurisdicción de la Corte Internacional de Justicia como obligatoria *ipso facto* y sin acuerdo especial, tal como se dispone en el Tratado, se halla determinada por toda limitación jurisdiccional o por otra clase de limitación contenidas en toda declaración depositada por los Estados Unidos de América según el artículo 36, párrafo 4, de los Estatutos de la Corte, y que se encuentre en vigor en el momento en que se plantee un caso determinado.

4. El Gobierno de los Estados Unidos de América no puede aceptar el artículo VII relativo a la protección diplomática y al agotamiento de los recursos. Por su parte, el Gobierno de los Estados Unidos mantiene las reglas de la protección diplomática, incluyendo la regla del agotamiento de los recursos locales por parte de los extranjeros, tal como lo dispone el derecho internacional."

Paraguay

"La Delegación del Paraguay formula la siguiente reserva:

El Paraguay supedita al previo acuerdo de partes el procedimiento arbitral, establecido en este protocolo para toda cuestión no jurídica que afecte a la soberanía nacional, no específicamente convenida en tratados actualmente vigentes."

Peru

"La Delegación del Perú formula las siguientes reservas:

1. Reserva a la segunda parte del artículo V porque considera que la jurisdicción interna debe ser definida por el propio Estado.

2. Reserva al artículo XXXIII y a la parte pertinente del artículo XXXIV por considerar que las excepciones de cosa juzgada, resuelta por arreglo de las Partes o regida por acuerdos o tratados vigentes, determinan, en virtud de su naturaleza objetiva y perentoria, la exclusión de estos casos de la aplicación de todo procedimiento.

3. Reserva al artículo XXXV en el sentido de que antes del arbitraje puede proceder, a solicitud de parte, la reunión del Organo de Consulta como lo establece la Carta de la Organización de los Estados Americanos.

4. Reserva al artículo XLV porque estima que el arbitraje constituido sin intervención de parte, se halla en contraposición con sus preceptos constitucionales."

Nicaragua

"La Delegación de Nicaragua, al dar su aprobación al Tratado Americano de Soluciones Pacíficas (Pacto de Bogotá), desea dejar expresa constancia en el Acta, que ninguna disposición contenida en dicho Tratado podrá perjudicar la posición que el Gobierno de Nicaragua tenga asumida respecto a sentencias arbitrales cuya validez haya impugnado basándose en los principios del Derecho Internacional, que claramente permiten impugnar fallos arbitrales que se juzguen nulos o viciados. En consecuencia, la firma de la Delegación de Nicaragua en el Tratado de la referencia, no podrá alegarse como aceptación de fallos arbitrales que Nicaragua haya impugnado y cuya validez no esté definida.

En esta forma, la Delegación de Nicaragua reitera la manifestación que hizo en fecha 28 de los corrientes, al aprobarse el texto del mencionado Tratado en la Tercera Comisión."

Annex 37

Report of the Secretary General of the Organization of American States Presented to the Council of the Organization of American States on 3 November 1948, *OAS Annals*, Vol. I, No. 2, 1949, pp. 45-54

CHAPITRE IV

Traité américain de réglements pacifiques

La signature du traité américain de réglements pacifiques est probablement le pas en avant le plus audacieux qui fût fait à la neuvième conférence, et à mon avis, par beaucoup d'aspects, cet acte est plus important qu'une bonne partie des instruments élaborés et approuvés à Bogotá. Ce n'est certainement pas une progrès réalisé sur un terrain définitivement solide, et il est à craindre que ne s'écoulent qelques années avant que le traité ne s'étende, avec pleine vigueur, à la communauté régionale entière. Même ainsi, ses dispositions, acceptées par quatorze pays sans réserve aucune, sont d'une telle conséquence que l'instrument aura une grande valeur pratique et didactique dans la sphère mondiale, et passera sûrement à l'histoire du droit international comme un des fondements de l'étape de paix institutionnelle que nous approchons, et qui s'impose par des forces plus puissantes que toutes celles qu'en sens contraire entretenaient les nationalismes intransigeants.

Quand on étudiera avec plus de perspective historique le mouvement juridique interaméricain, on observera avec respect la logique de son évolution, et beaucoup de faits qui maintenant nous paraissent l'œuvre du hasard sembleront si intelligemment concertés, que personne ne doutera qu'il n'y ait eu un plan harmonieux et systématique régissant leur développement. Anticipons sur ce jugement et arrêtons-nous à l'examen du processus qu'a parcouru l'organisation interaméricaine dans sa recherche d'un ordre juridique de paix. Pendant un certain temps, la tendance est parallèle en Europe. On croit possible d'organiser la paix en établissant un mécanisme de réglements pacifiques auquel ne pourraient moins faire que de souscrire les nations qui, de bonne foi, se disent amies de la paix. Il n'y a rien de coercitif ni de coactif dans le mécanisme. Le principe sur lequel il se fonde est qu'il y a des forces morales supérieures qui inclinent les nations à bien agir et à vivre en paix, et que si elles trouvent sur leur chemin toutes sortes d'occasions et de systèmes pour éviter que la paix ne soit rompue, elles utiliseront intensément ces occasions et ces systèmes. Mais les nations américaines ont très vite compris qu'il fallait aller plus loin. Avec leurs procédures habituelles, elles commencèrent à construire un édifice de principes, dont la consolidation a commencé, et réussit en grande partie, par la méthode très sensée de la pédagogie: la répétition. Des résolutions successives, des conventions, des accords, des déclarations, vont s'entassant pour préparer le champ sur lequel se livrera enfin la bataille définitive contre la guerre. Elle perdra sa principale utilité: la conquête. Les Etats américains s'engageront moralement à ne pas accepter pour légitime le résultat d'une guerre de conquête. Ils n'accepteront pas, non plus, qu'on puisse employer la guerre pour forcer un Etat à remplir des obligations pécuniaires. Plus tard, ils condamneront la guerre en tant qu'instrument de politique internationale, et ensuite, la guerre d'agression, et ils s'engageront à régler tout différend par des moyens pacifiques. Puis ils déclareront leur solidarité avec la victime de l'agression. Qu'est-il arrivé? Qu'au moins techniquement, la guerre n'a pas d'utilité, qu'on ne peut l'employer pour aucune des fins qui motivaient toujours son déchaînement entre les peuples, et que celui qui s'engagerait volontairement dans une guerre rencontrerait devant lui cette muraille de principes qui rendrait, vainqueur ou vaincu, sa conduite injustifiable.

Mais jusque-là le réseau complexe de déclarations et d'affirmations du droit, toute la trame de l'éthique internationale américaine, ne suffiraient qu'à condamner la conduite de qui se dérobe à ces règles, auxquelles se sont volontairement soumis les Etats de l'hémisphère. Il y a deux grands vides, mieux même: deux abîmes, sur le bord desquels les peuples américains ont vécu longtemps. Toutes leurs constructions juridiques auraient pu y choir, à la moindre négligence. Si malgré tous les efforts que leur rédaction avait réclamés, ces normes avaient été violées par un Etat et qu'il n'eût pas été possible d'appliquer une sanction à son comportement, et si le fait s'était de temps en temps répété, la déception la plus profonde et la plus justifiée se serait emparée des peuples, et le droit international américain n'aurait pas progressé d'un pouce de plus ou bien il aurait pu advenir que tout ce monument juridique, laborieusement édifié sur la bonne foi des Etats, fût l'objet d'une interprétation unilatérale, par n'importe lequel d'entre eux, et que celui-ci l'appliquât à un autre, pour justifier un acte de violence. Il manquait donc, sur ces deux abîmes, deux ponts définitifs: l'*action collective* et la *non-intervention*. La non-intervention, pour éviter qu'un Etat américain intente d'abroger le droit d'appliquer les règles juridiques approuvées par tous, et l'action collective, pour empêcher que les règles juridiques ne demeurent qu'écrites, n'ayant personne pour les appliquer. Prudemment, les Etats américains cheminèrent dans cette voie hérissée de difficultés, et s'arrêtèrent à ce qui paraissait le plus convenable: en premier lieu, fermer le passage à toute action individuelle et à toute intervention. Quand fut définitivement écartée cette possibilité et le péril conjuré, ils firent le deuxième pas: l'action collective. Entre Montevideo (la non-intervention) et Chapultepec (étape principale de l'action collective), la tâche fut de consolider, de réaffirmer, de répéter, le principe de la non-intervention, le martelant sans relâche aucune. L'étape de l'action collective avait commencé, quand fut déclenchée la deuxième guerre mondiale. Alors, la solidarité était aussi ferme déjà que la non-intervention. Si les Amériques sont solidaires, c'est-à-dire, un bloc solide qu'affecterait aussi bien la bonne ou la mauvaise fortune de n'importe laquelle de ses parties, une agression venant de l'extérieur contre l'une d'elles affecterait fatalement tout l'ensemble. La conséquence inévitable serait la réaction collective, uniforme, contre l'agresseur et pour défendre la victime. Mais il y avait quelques doutes, relatifs à l'adaptation du principe à l'hypothèse purement américaine. Si l'agresseur est un délinquant, se disait-on, pourquoi accepter deux genres de délits, alors qu'il s'agit d'un seul en réalité? Pourquoi l'étranger, l'extracontinental, provoque-t-il la réaction collective, et n'en est-il pas ainsi du même délit, quand il est commis par des Américains? Tel fut le pas qu'on a franchi à Chapultepec. L'action collective avait trouvé un fondement, avec quoi jusqu'à la dernière possibilité de justification, pour une action individuelle, a disparu.

Mais où l'on voit mieux la subtilité de cette évolution, c'est dans ce que beaucoup de gens appelèrent une erreur, et qu'on a prouvé être la réussite la plus claire. La paix ne s'obtient pas seulement par le perfectionnement graduel des méthodes de règlement pacifique, si après que toutes aient été employées, une menace de guerre demeure encore possible. C'est seulement quand la guerre devient impossible que les méthodes de solution pacifique opèrent effectivement, puisque la seule hypothèse de la guerre, pesant sur les procédures de règlement pacifique, peut les convertir en une machine interne de pression, avec des formes juridiques, pour obliger les faibles à légaliser définitivement la violence exercée contre eux. Ainsi le comprirent les hommes d'Etat américains et pour cela, dès le première moment, la tendance fut de mettre la guerre hors la loi, jusqu'à ce qu'à Rio de Janeiro, en 1947, le résultat fût obtenu. C'était alors le moment, et non avant, d'offrir, comme substitut à la porte qui se fermait définitivement, un système complet de moyens de règlement pacifique, pour que soit aplanie toute difficulté internationale. Et aussi bien convenait-il, en ce temps, de rendre obligatoires les règlements pacifiques.

Ce cycle évolutif du droit américain coïncide avec celui du droit universel en tous leurs aspects fondamentaux. Les Nations Unies ont créé de nouveaux faits juridiques. En réaction à la débilité institutionnelle de la Ligue des Nations, le nouveau statut international octroya des pouvoirs considérables au Conseil de sécurité pour obtenir le règlement pacifique des conflits, les apaiser et les éteindre, toutes les fois qu'ils constituent une menace pour la paix. Tous les peuples, et mêmes ceux qui font partie du groupe privilégié des cinq membres du Conseil, savent dès lors que toute dispute où ils s'engageraient et qui dans l'esprit du Conseil menacerait la paix, peut être tranchée, non pas suivant une procédure établie et bien connue, mais par ce que jugerait recommandable, dans les circonstances, un corps éminemment politique.

Pour le groupe des Etats américains, qui avait pu se consolider sur la base du principe de l'égalité juridique, ce moyen, étant unique et exclusif, impliquait un rétrogradation considérable. Une seule nation de ce groupe américain, le membre permanent du Conseil, sans l'existence de l'organisme régional, aurait eu la faculté d'opposer son veto à tout règlement d'une dispute interaméricaine où elle se trouverait engagée directement, quand le différend arriverait devant le Conseil. Certes, cette même faculté peut être exercée dans toutes les situations mondiales qui sont de la juridiction de l'organe de sécurité. Mais les autres nations, n'étaient pas engagées dans un système de droit ancien, efficace et solidement basé sur l'égalité juridique des Etats, mais au contraire arrivaient pour la première fois à jouir des avantages que la nouvelle organisation internationale offrait à une monde où, jusqu'à cette heure, prédominait seulement la force matérielle de chaque Etat, sans aucune autre qui eût à lui faire équilibre.

Maintenant que la guerre devenait impossible, par l'action combinée des deux organisations, la régionale, en première instance, et la mondiale, comme un recours supérieur, au cas où faillirait la régionale; que s'annulaient tous ses effets et qu'ils étaient condamnés comme illégitimes, le règlement pacifique des différends, en forme obligatoire, était un pas beaucoup plus facile à faire. Toutefois, à la neuvième conférence, malgré que toutes les situations juridiques et politiques fussent changées, dès qu'on essaya d'introduire, pour la première fois, le règlement obligatoire, quelques-unes des anciennes résistances subsistaient, et l'opposition à l'arbitrage ou au règlement judiciaire avec caractère obligatoire reproduisit, par la force de l'inertie, les sentiments et même les expressions d'une époque du droit international qui avait été dépassée.

Dans l'histoire du droit international, le règlement pacifique obligatoire des différends et des conflits a été rattaché au concept de souveraineté le plus

aigu, pour une raison élémentaire: parce que ne pas régler un différend pa
une méthode pacifique laisse toujours la possibilité du recours à la force. Le
nations faibles ou désarmées ont toujours été les championnes de l'arbitrag
et du règlement judiciaire. Les fortes ont hésité devant une procédure qu
implique, à l'origine, qu'elles déposeront, devant les juges ou les arbitres
toutes les attributions de leur puissance matérielle, pour se mettre au nivea
des autres nations dans la présentation des faits et l'appréciation juridiqu
des circonstances politiques qui avaient provoqué le différend. Mais l'évolu
tion du droit entre les individus ne se fit pas d'une autre manière. Personne n
voulait se soumettre volontairement à des juges, tant qu'il pouvait conserve
le privilège de résoudre ses propres disputes et avait assez de force pour im
poser la décision finale. Les juges, qui ont existé presque depuis les première
étapes de l'humanité, comme ont existé, bien des siècles avant nous, des pro
cédures de règlement pacifique des différends internationaux, n'arrivèren
cependant à étendre leur autorité à certaines zones aristocratiques que lors
que des révolutions successives rendirent impossible l'emploi de la force pou
régler les disputes entre les individus. Tant que le facteur force continuait d
peser sur le droit international, personne ne se sommettait au droit, sau
quand il était d'accord avec ses intérêts. Mais si la guerre est considérée comm
un délit et que la nation qui entend y recourir rencontre subitement une coal
tion de forces supérieures qui la contiennent, la réduisent et la privent de tou
les avantages qu'elle pourrait rechercher, les Etats ne trouveraient aucun
raison, ni publique ni secrète, pour ne pas accepter les règlements obligatoire
Pour avoir réussi à placer la guerre dans cette position morale et juridiqu
depuis longtemps déjà, les nations américaines sont plus près que toutes autre
au monde à être régies par un système de droit, qui suppose, comme il est clai
une décision ultime et obligatoire.

Antécédents du traité. — A la septième Conférence internationale améri
caine de Lima, en 1938, on adopta la résolution n° XV, dans laquelle apr
avoir reconnu que «les normes juridiques pour prévenir la guerre en Am
rique se trouvent dispersées dans de nombreux traités, conventions, pactes
déclarations qu'il est nécessaire de systématiser en un ensemble organisé
harmonieux», on recommanda que les divers projets présentés à la conf
rence soient classifiés par l'Union panaméricaine et remis aux gouvern
ments en vue de leur appréciation. La Conférence internationale américain
entreprendrait ensuite l'élaboration du code de la paix.

En mai 1943, le Conseil demanda au comité juridique interaméricain de l
préparer un projet coordonné de convention pacifique. D'accord avec cet
demande, le comité juridique entreprit une étude des accords interaméricai
existants et des projets présentés à la conférence de Lima, et élabora de
avant-projets: le premier, désigné par la lettre A, se limitait à coordonner l
accords en vigueur, sans y introduire de changements ni formuler de propos
tions d'amendement; le deuxième, désigné par la lettre B, était une tentati
plus formelle de préparer le projet sur la base de ceux qui avaient été somn
à la conférence de Lima, en tenant compte du rapport de la commissi
d'experts pour la codification du droit international, dont ils ont fait l'obje

La résolution XXXIX de la conférence de Mexico recommanda que l
comité juridique interaméricain entreprendrait l'élaboration immédiate d'u
avant-projet de «système interaméricain de paix», qui coordonnerait les in
truments continentaux de prévention et de règlement pacifique des diff
rends. Pour préparer ce travail, le comité devrait tenir compte des proje
soumis à la huitième Conférence internationale américaine de Lima et d

celui qu'avait rédigé le comité, lui-même. En conséquence, le comité élabora un troisième avant-projet en septembre 1945. Cet avant-projet fut remis aux gouvernements américains, pour avoir leurs appréciations. Une fois qu'elles furent reçues, le comité rédigea un deuxième projet qui fut envoyé au conseil directeur en novembre 1946.

Les différences fondamentales entre ces deux projets résident en ceci que, dans le second, la comité se prononça en faveur du système de l'arbitrage obligatoire pour les différends de toutes natures, qu'ils fussent juridiques ou non, qui, de l'avis d'une des parties, ne seraient pas susceptibles de réglement par une des procédures de médiation, d'investigation on de conciliation, établies dans le même projet. Dans le projet de 1945, le comité juridique se bornait à proposer qu'on reconnaisse la convenance de soumettre à l'arbitrage ou au réglement judiciaire tous les différends qui pourraient survenir entre les parties et qui seraient de nature juridique, parce que susceptibles d'obtenir une décision par l'application des principes du droit. Dans ce même projet, en 1945, on introduisait une procédure de consultation, que le projet de 1947 jugea inutile, et d'autant plus qu'en proposant un dénouement définitif et obligatoire pour tous les différends, seule la possibilité pourrait se présenter qu'une des parties n'accomplisse pas son engagement, créant une situation de caractère politique, qui serait alors de la compétence des réunions de consultation des ministres des relations extérieures et non d'un traité de réglements pacifiques.

Le comité juridique interaméricain, dans le rapport annexe au projet définitif de 1947, se réfère à la résolution n° X de la conférence de Rio de Janeiro, tenue peu de mois auparavant, dans laquelle on recommande,

> «qu'à la neuvième Conférence internationale américaine qui aura lieu prochainement à Bogota, on étudie, en vue de leur approbation, les institutions qui donnent efficacité à un système pacifique de sécurité, et, parmi elles, à l'arbitrage obligatoire pour tout différend qui met en péril la paix et qui soit de nature juridique».

Plus loin le comité ajoute:

> «Nous croyons sincèrement que malgré les difficultés que dans la pratique ils aient pu avoir avant la reconnaissance de l'arbitrage ample, les États américains sont arrivés à une étape de leur évolution juridique où cette reconnaissance répond à une véritable nécessité... Que ce soit ainsi, non seulement le corrobore ce fait que dans le passé de très graves problèmes, entre autres ceux des frontières, survenus entre les pays américains furent efficacement et définitivement résolus par la procédure d'arbitrage, mais aussi les termes mêmes de l'acte de Chapultepec et du traité de Rio, instruments qui constituent les manifestations les plus récentes et les plus autorisées du panaméricanisme.»

En effet, la conférence de Chapultepec approuva, comme principe de droit international,

> «l'adoption de la voie de la conciliation, de l'arbitrage ample, ou de la justice internationale, pour résoudre tout différend ou dispute entre les nations, quelles que soient leur nature et leur origine».

et

> «le traité interaméricain d'assistance réciproque dit, au préambule, que tous les principes et déclarations de l'acte de Chapultepec — parmi

> lesquels se trouve celui que je viens de citer — doivent être tenus pour acceptés, comme normes de leurs relations mutuelles et comme base juridique du système interaméricain.»

Le Conseil, à la réception du projet du comité juridique, décida de le transmettre aux gouvernements, accompagné du rapport préparé par le chef du département juridique et d'organismes internationaux de l'Union panaméricaine, dans lequel sont signalées les différences fondamentales entres le projet de 1945 et celui de 1947.

Un changement de direction. — Mais à la neuvième conférence il y eut un changement subit de direction, qui est exprimé dans le traité américain de règlements pacifiques. Alors qu'on pensait que le débat allait se situer entre les partisans de l'arbitrage obligatoire et ceux qui considéraient ce progrès comme trop avancé, qui déjà en d'autres occasions avait reçu de sérieuses réfutations, une formule a surgi, qui fut défendue avec une particulière vigueur par les délégations de Colombie, du Mexique et de l'Uruguay, afin qu'on accorde la priorité à la procédure judiciaire, avec un caractère obligatoire, comme méthode définitive de règlement des différends. Cette procédure devait être appliquée par la Cour internationale de Justice, suivant les pouvoirs que lui accorde ses Statuts. L'arbitrage ne serait obligatoire que lorsque la Cour, en des cas déterminés se serait déclarée incompétente pour connaître du différend.

Il n'est étrange d'aucune façon que les Etats américains, traditionnellement attachés aux principes de droit les plus purs, aient trouvé cette voie encore plus attrayante que l'arbitrage obligatoire, lui-même. Le règlement judiciaire des différends internationaux avait des antécédents américains très respectables et très efficaces. Beaucoup d'Etats de l'hémisphère s'étaient déjà engagés, par des traités bilatéraux, à se soumettre à la juridiction obligatoire de la Cour. Mais le caractère obligatoire de la procédure judiciaire réclamait une garantie plus grande: celle qu'aucun Etat ne pourrait alléguer que le différend concernait des questions qui, par leur essence, étaient de la juridiction interne, laissant le conflit sans dénouement et, en apparence, résolu unilatéralement. Est-ce pourquoi l'article XXXIII du Pacte de Bogotá établit qu'au cas où

> «les parties ne se mettraient pas d'accord sur la compétence de [illegible] Cour au sujet du litige, la Cour elle-même décidera au préalable de [illegible]tte question».

Ainsi donc, le traité envisage un système logique de moyens pacifiques, parmi lesquels peuvent choisir les Etats; mais si son application n'était pas suffisante et que l'étape de la conciliation ne réussissait pas, et qu'on n'eût pas mis les parties d'accord à soumettre l'affaire à l'arbitrage, n'importe laquelle de ces parties aurait le droit de recourir à la Cour internationale de Justice, dont la juridiction serait obligatoirement ouverte, conformément au paragraphe 2 de l'article 36 de ses Statuts. La mesure, qui paraît dramatiquement radicale, n'est que la conséquence logique de la déclaration, réitérée par les Etats américains, de leur intention de résoudre tout conflit par des procédures pacifiques. Il ne suffit pas d'offrir une série de méthodes parmi lesquelles les Etats peuvent choisir, s'il n'est pas une entre toutes qui, avant l'échec des autres, résolve le problème, et qui, par conséquent, doit être appliquée avec force. L'harmonie du traité américain de règlements pacifiques avec la Charte se montre à l'article 23 de cette dernière, d'ailleurs élaborée par la même commission qui prépara le traité, et qui dit:

> «Un traité spécial établira les moyens propres à résoudre les différends et fixera les procédures qui conviennent à chacun des moyens pacifiques, de façon à ce qu'aucun différend surgissant entre les Etats américains ne reste sans solution définitive au-delà d'une période raisonnable.»

Ceci est établi par le pacte de Bogotá, avec le caractère obligatoire de la procédure judiciaire. Un autre traité aurait pu le faire par l'établissement de l'arbitrage obligatoire. Mais aucun système qui n'envisagerait une étape dernière obligatoire ne pourrait se trouver, à l'avenir, en concordance avec la volonté des Etats américains, telle qu'elle est exprimée dans la Charte.

Le traité envisage des procédures de bons offices et de médiation, d'investigation et de conciliation — la procédure judiciaire et celle de l'arbitrage. Ce sont les mêmes méthodes qui sont établies dans les deux chartes: celle des Nations Unies et celle des Etats américains. Mais dans le traité, la négociation ne figure pas, vu que sa fin est de créer des procédures, pour le cas où un différend, de l'avis des parties, ne peut être résolu par négociation directe et selon les moyens diplomatiques usuels.

Les procédures ne sont pas échelonnées dans un ordre de préférence, et les parties peuvent recourir a celle qu'elles considèrent meilleure en chaque cas, sans être obligées de les épuiser toutes. Il peut arriver, par exemple, qu'après la rupture des négociations elles conviennent d'en appeler à l'arbitrage ou à la Cour internationale de Justice, sans essayer de passer par l'étape de la conciliation ou essayer les bons offices et la médiation. Dans toutes ces procédures, on suppose qu'il y a accord des parties pour y recourir. Mais si la tentative de conciliation échoue, parce qu'une des parties n'en a pas voulu ou parce qu'on n'est pas arrivé à un accord quelconque sur le cas soumis, la procédure judiciaire sera obligatoire, si une des parties en appelle à la Cour internationale de Justice.

Il peut arriver qu'un des Etats, partie dans le différend, allègue que le cas n'est pas susceptible d'un règlement judiciaire, pour essayer, précisément, une des exceptions prevues dans le traité, c'est-à-dire, pour le présenter comme une affaire relevant de sa juridiction intérieure; ou bien, pour avoir été déjà résolu par un arrangement des parties, ou une sentence arbitrale, ou la décision d'un tribunal international; ou encore parce qu'il se trouve régi par un accord ou des traités en vigueur à la date de la signature du traité américain des solutions pacifiques. En ce cas, la question préalable sera soumise à la Cour, toutes les fois qu'une des parties soulèvera l'exception. Si la Cour, dans le cas de la procédure judiciaire, se déclare incompétente pour les motifs antérieurements cités, le différend sera donné pour terminé. Comme on le déclarera terminé aussi bien, même s'il ne s'agit pas de procédure judiciaire, si la question prealable des exceptions à l'application du traité est posée, la Cour décide que l'affaire est précisément un des cas d'exception dans lesquels le traité ne s'applique pas.

L'arbitrage. — Mais existe aussi la possibilité que, pour d'autres motifs, la Cour se déclare incompétente pour connaître du différend et le résoudre. Pour ce cas, il y a encore une autre voie, tout aussi obligatoire, et elle s'appelle: l'arbitrage. C'est le seul cas où l'arbitrage est obligatoire, selon le pacte de Bogotá. Dans les autres, il n'est qu'une procédure à laquelle on se soumet volontairement, qui se trouve placée sur le même pied que toutes, et à laquelle peuvent recourir les parties, à n'importe quelle phase de leur différend. Les dispositions du chapitre V du traité, sur la procédure d'arbitrage, se réfèrent aux deux hypothèses; mais il est clair que lorsqu'il y a accord, entre les parties, de soumettre un cas à l'arbitrage, les règles qui prévoient la manière de combler le vide produit par la renonciation de l'une d'elles ne s'appliquent que si les parties n'arrivent pas à un accord. Il y a même mieux: les dispositions sur l'arbitrage s'appliquent lorsqu'il est obligatoire, parce que la Cour s'est déclarée incompétente dans l'hypothèse de l'article XXXV, ou lorsque ayant convenu de recourir à l'arbitrage les parties ne peuvent arriver à un accord qui supplée aux normes générales du traité sur les arbitres, la procédure, les délais, etc. Par contre, l'accord des parties sur ces points rend inutile l'application des règles du chapitre V, et leur laisse liberté entière pour rechercher l'arbitrage dans la forme qu'elles jugent la plus convenable.

La consultation. — Comme il est naturel, le traité a éliminé les procédures de consultation entre les gouvernements américains qui, dans les projets antérieurs du comité juridique, avaient eu une importance et une étendue considérables. La consultation, pour le règlement pacifique, est justifiée pleinement lorsqu'il n'existe pour le moins une procédure obligatoire. Il s'agit alors de s'en remettre à la force morale des Etats américains pour une action sur les parties engagées dans un différend et les incliner à chercher un règlement de leur dispute. Mais à l'introduction de l'arbitrage obligatoire dans le dernier projet du comité juridique, la consultation disparut, comme elle disparut également du traité, lorsque la procédure judiciaire a été rendue obligatoire. Elle a disparu, évidemment, comme procédure de règlement pacifique, mais elle demeure comme force politique, pour faire respecter la décision prise par la Cour ou par les arbitres, dans les cas où l'action n'est pas obligatoire. Ainsi, l'article établit que si une des parties a manqué aux obligations que lui imposait un arrêt de la Cour ou une sentence arbitrale, l'autre partie, avant d'en appeler au Conseil de sécurité des Nations Unies, provoquera une réunion de consultation des ministres des relations extérieures, afin que celle-ci décide des mesures qu'il convient de prendre pour que soit exécutée la décision judiciaire ou arbitrale.

Suivant la Charte des Nations Unies, les Etats américains, tous membres de l'Organisation internationale, sont obligés d'obéir aux décisions de la Cour, pour tout litige où ils seront parties, et si l'un d'eux ne remplit pas les obligations que lui impose un arrêt de la Cour, l'autre partie pourra en appeler au Conseil de sécurité. La disposition du traité américain de règlements pacifiques n'affecte pas l'obligation ni ne méconnaît le droit qui est établi par l'article 91 de la Charte. Seulement, il crée une nouvelle étape, un appel ultime à la procédure régionale, avec le devoir de recourir en premier lieu à la réunion de consultation. La partie qui a succombé peut encore s'adresser au Conseil de sécurité, lequel pourra faire des recommandations ou dicter des mesures ayant pour but l'exécution de l'arrêt.

Les Etats américains ne désiraient pas créer un organe judiciaire régional. Le traité, pour longtemps au moins, écarte l'idée, que caressent tant d'Américains éminents, de créer un jour la Cour interaméricaine de Justice. L'opportunité de cette décision semble très claire. L'organisme régional, qui se justifie pleinement par l'action politique et coopérative, et en tant que créateur de nouvelles formes de droit, ne peut inspirer aucun doute sur la capacité ni l'efficacité de n'importe quel tribunal chargé d'appliquer le traité. La Cour internationale est assez pourvue par ses Statuts, pour que les juges puissent y puiser tous les éléments indispensables et toutes les sources authentiques du droit, en cherchant un fondement à leurs arrêts. L'article 38 des Statuts de la Cour lui ordonne d'appliquer les conventions internationales, tant générales que particulières, qui établissent des règles reconnues expressément par les États litigants; la coutume internationale, en tant que preuve d'une pratique de droit généralement acceptée; les principes généraux de droit reconnus par les nations civilisées; les décisions judiciaires et les doctrines des publicistes de la plus grande compétence et de différentes nations, comme moyen auxiliaire pour la détermination des règles de droit; et même cette faculté, par l'article 50, de charger n'importe quel individu, entité, bureau, commission ou autre organisme, de faire une investigation ou de pratiquer ane expertise. La Cour ne manque pas d'élasticité pour interpréter le droit américain, et il n'y a aucun avantage à ce que ce droit soit seulement appliqué par des Américains. Au contraire, il est désirable que ce droit, qui a pu être créé grâce à de nombreuses circonstances politiques favorables, et qui est une des plus grandes contributions de l'Amérique à la civilisation juridique contemporaine, s'étende, soit diffusé, soit étudié ou appliqué, inclusivement, dans d'autres régions du monde. La constitution de la Cour garantit qu'il y aura toujours, parmi ses membres, les plus grands juristes américains et que tous les juges qui la composent seront choisis avec le plus grand soin, afin de garantir son impartialité. Une Cour interaméricaine de Justice limiterait l'expansion de notre droit et le circonscrirait dans l'hémisphère. Et ce serait porter un rude coup à l'une des plus nobles institutions modernes, et l'une des plus nécessaires, si l'on veut qu'un jour il y ait une paix juste sur la terre.

L'avenir du traité. — Contrairement à l'opinion générale, qui supputait beaucoup de difficultés, le traité américain de règlements pacifiques fut signé par un nombre considérable de gouvernements, les deux tiers, sans réserve aucune. Ce premier résultat fut admirable et surprenant. Il fut annoncé dès que le comité juridique américain eût soumis son dernier projet, contenant l'arbitrage obligatoire, que le mombre des réserves serait supérieur à celui des États qui pourraient adhérer pleinement à ce principe. Si, comme il est naturel de supposer, la signature du traité implique un vigoureux désir, de la part des gouvernements, de franchir ce pas important, et non pas une vue conventionnelle et formelle de l'esprit, sans conséquences pratiques, on peut espérer que, très bientôt, pour le moins quatorze États américains seront liés par toutes ses dispositions et prêts à l'appliquer entre eux, si par mauvaise fortune survenait quelque différend qui ne pourrait pas être résolu par les négociations directes.

Le traité, par sa nature même, n'entrera pas en vigueur suivant les normes courantes des autres pactes multilatéraux, comme la Charte des Nations Unies, celle des États américains ou le traité d'assistance réciproque. A mesure que les parties contractantes déposeront leur ratification, l'instrument entrera en vigueur pour toutes celles qui l'auront fait. Et aussi, tandis qu'entre en vigueur le traité, pour deux États américains ou davantage, cessent pour eux les effets des traités, conventions et protocoles collectifs qui, depuis 1923, assuraient le règlement pacifique des différends entre États américains.

Il est possible d'être très optimiste sur l'avenir du traité, même pour ce qui concerne les États qui l'ont ratifié avec réserves, surtout quand on examine soigneusement ces réserves et qu'on les compare entre elles. La tendance propre au négociateur est de formuler des réserves, toutes les fois qu'un texte ne lui paraît pas absolument clair, surtout en des matières aussi délicates que celles-ci. Il est fort possible que, postérieurement, quelques-unes de ces réserves ne soient pas jugées nécessaires par l'organe respectif de ratification, et même qu'un gouvernement qui a formulé des réserves les reconsidère avant de déposer sa ratification ou, comme il est prévu dans le traité, à n'importe quel moment et postérieurement à la ratification. Aujourd'hui même, si on compare les réserves formulées on verra que certaines d'entre elles impliquent une appréciation contradictoire des termes du traité, ce qui peut signifier que le traité n'est pas clair, mais que, susceptible d'éclaircissement, comme il est, surtout par la manière dont il s'accorde avec la Charte, il laisse subsister une série de possibilités que, pour le moins, quelques-unes des réserves soient abandonnées. Dans ce cas, paraissent se trouver, par exemple, celles qui sont relatives à l'application du traité, en cas d'urgence, à des différends sur des affaires déjà résolues par arrangement des parties, et que l'Equateur et la Bolivie paraissent entendre comme exclues par l'article VI, alors que l'Argentine explique ainsi, sa réserve à l'arbitrage et à la procédure judiciaire, tels qu'ils sont conformés dans le traité, qu'à

> «son avis ils devraient seulement être établis pour les différends susceptibles de se produire dans l'avenir, ne puisant leur source dans aucun fait, cause ou situation antérieurs à la signature de cet instrument et n'ayant aucun rapport avec ces derniers».

Le Pérou, pour sa part, fait réserve à l'article XXXIII et à ce qui est contenu dans l'article XXXIV,

> «car il estime que les exceptions de la chose jugée, résolue au moyen d'un accord entre les parties ou régie par les accords ou traités en vigueur, empêchent, en raison de leur nature objective et péremptoire, l'application à ces cas de toute procédure»;

c'est-à-dire que même exclus, comme ils le sont, par le traité, l'intervention de la Cour pour juger la question préalable, à savoir s'ils sont exclus ou non — à quoi seul le traité lui-même pourrait s'appliquer — devient inacceptable.

Ne sont pas dans le même cas d'autres réserves qui en elles-mêmes impliquent définitivement la non-conformité avec les principes fondamentaux du traité, et non des questions d'interprétation de ses clauses. Mais un traité qui, dès le début, conviendrait entièrement aux situations qui pourraient créer des différends entre quatorze pays américains est une avance prodigieuse. Pendant ce temps les relations des autres pays continueraient à être régies par les anciennes procédures, pour tous les cas où ceux-ci n'ont pas accepté des clauses du traité. Mais nous devrions aussitôt comprendre dans le premier groupe le Nicaragua, dont la réserve, qui concerne une situation spécifique, n'affecte en rien les dispositions essentielles du traité. Ainsi s'élèverait à quinze le nombre des Etas qui paraîtraient d'accord avec la totalité de ses clauses et disposés à accepter les obligations qui en découlent.

……

Annex 38

ANNEX III TO THE APPLICATION IN THE CASE CONCERNING THE *ARBITRAL AWARD MADE BY THE KING OF SPAIN ON 23 DECEMBER 1906 (HONDURAS V. NICARAGUA), I.C.J. PLEADINGS* (A: WASHINGTON AGREEMENT OF 21 JULY 1957; B: RESOLUTION OF THE COUNCIL OF THE ORGANIZATION OF AMERICAN STATES PASSED ON 5 JULY 1957)

Annex III

[A]

WASHINGTON AGREEMENT OF 21 JULY 1957

Solemn Act which occurred at the Panamerican Union on 21 July 1957, with the assistance of Members of the Council of the Organization of American States acting provisionally as an organ of consultation, for signature by Doctor Jorge Fidel Durón, Foreign Minister of Honduras and His Excellency Dr. Alejandro Montiel Arguello, Foreign Minister of Nicaragua of an "Agreement between the Ministries of Foreign Affairs of Honduras and Nicaragua on the procedure to be followed in presenting to the International Court of Justice their disagreement concerning the arbitral award handed down by His Majesty the King of Spain on 23 December 1906", as well as of the individual declarations made by each of the Foreign Ministers of Honduras and Nicaragua.

AGREEMENT BETWEEN THE MINISTRIES OF FOREIGN AFFAIRS OF HONDURAS AND NICARAGUA ON THE PROCEDURE TO BE FOLLOWED IN PRESENTING TO THE INTERNATIONAL COURT OF JUSTICE THEIR DISAGREEMENT CONCERNING THE ARBITRAL AWARD HANDED DOWN BY HIS MAJESTY THE KING OF SPAIN ON 23 DECEMBER 1906

On 5 July 1957, the Council of the Organization of American States acting provisionally as Organ of Consultation approved a resolution expressing its satisfaction at the voluntary and simultaneous acceptance by the Governments of Honduras and Nicaragua of the procedure of pacific settlement that was subscribed to by them, and the provisions of which are stated in the resolution mentioned.

In accordance with the same resolution, the Parties, having bound themselves to apply the American Treaty on Pacific Settlement — the "Pact of Bogota" — and to utilize the procedures set forth in that Pact, agree to abide by the following rules of procedure:

1. The Governments of Honduras and Nicaragua shall submit to the International Court of Justice, in accordance with its Statute and Rules of Court, the disagreement existing between them with respect to the Arbitral Award handed down by His Majesty the King of Spain on 23 December 1906, with the understanding that each, in the exercise of its sovereignty and in accordance with the procedures outlined in this instrument, shall present such facets of the matter in disagreement as it deems pertinent.

2. Within a maximum period of ten months counting from 15 September of the current year, the Government of Honduras shall, in accordance with Article 40 of the Statute of the International Court of Justice, submit to the said Court a written application instituting the proceedings and stating the claim, and it shall inform the Government of Nicaragua, fifteen days in advance, of the date on which it will take this action.

3. Within a period of two months following the notification that the Court is to make with respect to the above-mentioned written application, the Government of Nicaragua shall be deemed to have received notice, and within this same period shall designate the agent or agents who will represent it before the said Court.

4. The decision, after being duly pronounced and announced to the Parties, shall settle the disagreement once and for all and without appeal, and shall be carried out immediately.

5. As to the possible situation envisaged in the agreement set forth in the decision approved on 5 July 1957 by the Council acting provisionally as Organ of Consultation, the two Governments shall apply the measures contained in that agreement.

6. In implementing the provisions of this Agreement, the Government of Honduras and the Government of Nicaragua are mindful of the noble spirit of Point 6 of the decision approved on 5 July 1957 by the Council acting provisionally as Organ of Consultation, in which it is pointed out that Honduras and Nicaragua are linked in a very special way by geographic and historic ties within the Central American community.

Washington, D.C., 21 July 1957

(Signed)	*(Signed)*
Dr. Jorge FIDEL DURON,	Dr. Alejandro MONTIEL ARGUELLO,
Minister of Foreign Affairs of the Republic of Honduras.	Minister of Foreign Affairs of the Republic of Nicaragua.

Appendix "A"

STATEMENT OF THE MINISTER OF FOREIGN AFFAIRS OF HONDURAS ON THE POSITION OF HIS GOVERNMENT IN RESORTING TO THE INTERNATIONAL COURT OF JUSTICE

Honduras is submitting to the International Court of Justice its claim against Nicaragua that the Arbitral Award of His Majesty the King of Spain handed down on 23 December 1906 be carried out, basing its stand on the fact that the Arbitral Award is in force and is unassailable. Honduras has maintained and continues to maintain that Nicaragua's failure to comply with that arbitral decision constitutes, under Article 36 of the Statute of the International Court of Justice and in accordance with the principles of international law, a breach of an international obligation.

The foregoing reference to the position of Honduras in this proceeding is only of a general nature and in no wise constitutes a definition or limitation of the matter to be submitted to the Court, or a formula that restricts in any way the exercise of the right that Honduras will maintain in the action before the Court.

Appendix "B"

STATEMENT OF THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA ON THE POSITION OF HIS GOVERNMENT IN APPEARING BEFORE THE INTERNATIONAL COURT OF JUSTICE

Nicaragua, when it appears before the International Court of Justice, will answer the claim of Honduras, presenting reasons, actions, and facts, and opposing the exceptions that it considers appropriate, in order to impugn the validity of the Arbitral Award of 23 December 1906, and its compulsory force, and also invoking all those rights that may be in its interest. Nicaragua has maintained and now maintains that its boundaries with Honduras continue in the same legal status as before the issuance of the above-mentioned Arbitral Award.

The foregoing reference to the position of Nicaragua in this proceeding is only of a general nature and in no wise constitutes a definition or limitation of the matter to be submitted to the Court, or a formula that restricts in any way the exercise of the right that Nicaragua will maintain before the Court.

No. 6594

Certificate of Registration

The Secretary-General of the United Nations

Hereby certifies that the Government of the Republic of Honduras

Has registered with the Secretariat in accordance with Article 102 of the Charter of the United Nations

The Agreement (with related documents) between Honduras and Nicaragua for submitting to the International Court of Justice their differences with respect to the Award of His Majesty the King of Spain of 23 December 1906, signed at Tegucigalpa and at Managua on 21 and 22 June 1957, respectively; and

The Agreement (with annexes A and B) on the procedure for submitting to the International Court of Justice their differences with respect to the Award of His Majesty the King of Spain of 23 December 1906, signed at Washington, on 21 July 1957.

The registration took place on 28 September 1957 under No. 4005.

Done at New York, on 21 October 1957.

To the Government of the Republic of Honduras.

[B]

COUNCIL OF THE ORGANIZATION OF AMERICAN STATES, PAN AMERICAN UNION — WASHINGTON d.c.

Council Series
C-sa-254 (English)
5 July 1957
Original: Spanish

DECISIONS TAKEN AT THE MEETING HELD ON 5 JULY 1957

The Council passed the following resolution:

THE COUNCIL OF THE ORGANIZATION OF AMERICAN STATES ACTING PROVISIONALLY AS ORGAN OF CONSULTATION

HAVING SEEN:

The report of the *Ad Hoc* Committee charged with collaborating with the Governments of Honduras and Nicaragua in accordance with the resolutions approved on 17 May and 24 May 1957, by this Council acting provisionally as Organ of Consultation; and

CONSIDERING:

That the regional system has demonstrated its effectiveness in carrying out its noble purpose of guaranteeing the sovereignty and independence of the American Republics and fraternal relations between them;

That, in accordance with the letter and the spirit of the Inter-American Treaty of Reciprocal Assistance — the Rio Treaty —, the application of this instrument should lead not only to the elimination of any armed conflict but also to the promotion of measures for the pacific settlement of the controversy that is considered to have given rise to such a situation;

That the American Treaty on Pacific Settlement — the Pact of Bogota — which has been ratified by the Governments of Honduras and Nicaragua, provides procedures that are applicable to the case under consideration; and

Pursuant to and in execution of the Rio Treaty,

RESOLVES:

1. To express its satisfaction at the voluntary and simultaneous acceptance by the Governments of Honduras and Nicaragua of the procedure of pacific settlement that, with the collaboration of the *Ad Hoc* Committee, was subscribed to by both Parties, and the text of which is as follows:

> "THE HIGH CONTRACTING PARTIES,
>
> FOLLOWING the recommendations of the Council of the Organization of American States acting provisionally as Organ of Consultation, which were actuated by the provisions of the Inter-American Treaty of Reciprocal Assistance that are applicable to controversies between American States, which provisions urge such States to take the necessary measures to re-establish peace and settle their controversies by pacific means; and
>
> DESIROUS of reestablishing as soon as possible the harmonious fraternal relations that are a traditional characteristic of relations between the American Republics and particularly between countries that, like those of Central America, consider themselves to be linked by historic ties of solidarity;
>
> AGREE to carry out, through the application of the American Treaty on Pacific Settlement — the 'Pact of Bogotá' — and for the purpose of settling once and for all the difference that is separating them at this time, the judicial procedure outlined below:
>
> (1) The Parties, having recognized and accepted in the Pact of Bogotá the jurisdiction of the International Court of Justice as *ipso facto* compulsory, shall submit thereto the disagreement existing between them with respect to the Arbitral Award handed down by His Majesty the King of Spain on 23 December 1906, with the understan-

> ding that each, within the framework of its sovereignty, shall present such facets of the matter in disagreement as it deems pertinent.
>
> (2) The procedure to be followed by the Court shall be that established in its Statutes and Rules of Procedure.
>
> (3) The decision, after having been duly pronounced and officially announced to the Parties, shall decide the disagreement definitively and without right of appeal, and shall be carried out without delay.
>
> (4) If one of the High Contracting Parties should fail to comply with the obligations imposed upon it by the decision of the International Court of Justice, the other, before having recourse to the United Nations Security Council, shall request a Meeting of Consultation of Ministers of Foreign Affairs of the American States to decide upon all the measures that it is appropriate to take to enable the decision of the Court to be carried out.
>
> (5) If, as a result of the application of the aforementioned judicial procedure, all phases of the disagreement with respect to the Arbitral Award handed down by His Majesty the King of Spain on 23 December 1906 are not definitively settled, the High Parties shall, without delay, apply the arbitral procedure provided by the aforesaid Pact of Bogotá to settle definitively the new situation created between them, which shall be clearly defined in the additional agreement that the High Parties are to sign to this end within a period of three months from the date they are officially notified of the decision.
>
> (6) In accepting the procedure set forth in this instrument and the pertinent application of the Pact of Bogotá to the case here considered, the High Contracting Party that made a reservation to the aforesaid international agreement declares that the aforesaid reservation shall not take effect."

2. To express its appreciation to the Governments concerned for the active and effective cooperation they gave to the Council acting provisionally as Organ of Consultation and the *Ad Hoc* Committee, to enable the procedural agreement whose text has been quoted in the preceding paragraph to be reached.

3. To request the Governments of Honduras and Nicaragua to maintain the present *status quo*, without thereby altering any of the legitimate rights claimed by both Parties, until a definitive settlement of the controversy is achieved by the application of rules of law and without at any time disrupting the peace between the Parties.

4. To state that the Honduran-Nicaraguan Joint Military Committee is empowered to deal with any differences that might arise during the period mentioned in the preceding paragraph, with respect to the agreement referred to in its current Regulations.

5. To transmit this document with each Party's note of acceptance to the Secretary-General of the United Nations and, through him, to the International Court of Justice.

6. To express its strong hope that the procedure set forth in the first paragraph of this resolution will settle, once and for all, the disagreement that has temporarily separated two countries like Honduras and Nicaragua, which are linked in a very special way by geographic and historic ties and called upon by destiny to maintain and strengthen their cordial relations in this important region of the Americas.

Annex 39

COMMUNICATION OF THE TEXT OF DECREE NO. 79-86 OF 22 MAY 1986 OF THE NATIONAL CONGRESS OF THE REPUBLIC OF HONDURAS, *LA GACETA*, NO. 24,940, 6 JUNE 1986

[Spanish text not reproduced]

(Traduction)

DECRET N° 79-86

LE CONGRES NATIONAL

Considérant qu'en date du 21 mai 1986 le Congrès national a décidé par décret 75-86 de modifier la déclaration formulée par le Gouvernement du Honduras le 20 février 1960 relative à l'acceptation de la juridiction de la Cour internationale de Justice.

Considérant que dans le contexte régional l'article XXXI du traité américain de solutions pacifiques contient une déclaration d'acceptation de ladite juridiction.

Considérant qu'en conséquence il est nécessaire d'uniformiser les termes dans lequels le Honduras a accepté la juridiction de la Cour internationale de Justice.

Par conséquent,

Décrète

Article 1. Autoriser le pouvoir exécutif à travers le ministère des relations extérieures à notifier au secrétariat général de l'Organisation des Etats américains les modifications introduites par le décret 75-86 du 21 mai 1986 qui sont également applicables à l'article XXXI du traité américain de solutions pacifiques.

Article 2. Le présent décret entrera en vigueur à partir de la date de sa publication au journal officiel *La Gaceta*.

Fait dans la ville de Tegucigalpa, municipalité du district central, au salon des séances du Congrès national, le vingt et un mai mille neuf cent quatre-vingt-six.

Hector Orlando GOMEZ CISNEROS,
Président.

Teofilo Norberto MARTEL CRUZ,
Secrétaire.

Armando ROSALES PERALTA,
Secrétaire.

Au pouvoir exécutif.

Par conséquent: Soit exécuté.

Tegucigalpa, D.C., 22 mai 1986.

José Simon AZCONA HOYO,
Président.

Le ministre des relations extérieures
en exercice,
Guillermo CACERES PINEDA.

Annex 40

A: Communication of the Government of Honduras to the Secretary General of the Organization of American States of the Text of Decree No. 79/86 of the National Congress of Honduras on the Modifications of the Honduran Declaration of Recognition of the Compulsory Jurisdiction of the International Court of Justice, 26 May 1986; B: Note from the Secretary General of the Organization of American States to the Permanent Representative of Honduras to the Organization of American States, 30 June 1986

Document A

(Translation)

Office of the Secretary for Foreign Relations of the Republic of Honduras

Official Communication No. DSM-206/86

Tegucigalpa, D.C., 26 May 1986.

His Excellency João Clemente Baena Soares,
Ambassador,
Secretary General of the Organization of American States,
Washington, D.C.

Dear Secretary General,

I write to Your Excellency in order to send you, for the corresponding legal purposes, the declaration of the Government of the Republic of Honduras dated 22 May 1986 relating to the modifications introduced to the acceptance by Honduras of the jurisdiction of the International Court of Justice.

I take the opportunity to present, to Your Excellency, my sincere regards,

(Signed) Carlos López Contreras,
Minister for Foreign Relations.

Declaration of the Government of Honduras on Article XXXI of the American Pacific Settlements Treaty

The Government of the Republic of Honduras, duly authorized by National Congress by virtue of Decree No. 79-86 of 21 May 1986, to notify the Office of the Secretary General of the Organization of American States of modifications introduced by Decree No. 75-86 of 21 May 1986, in respect of the acceptance of the jurisdiction of the International Court of Justice in view of the fact that the terms of the said modificatory declaration are likewise applicable with regard to Article XXXI of the American Treaty on Pacific Settlement.

NOW THEREFORE:

The Government notifies the Office of the Secretary General of the Organization of American States, for all corresponding legal purposes, of the following declaration:

Acceptance of the jurisdiction of the International Court of Justice provided for in Article **XXXI** of the American Treaty on Pacific Settlement on the following terms:

1. It recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:
   - *(a)* the interpretation of a Treaty;
   - *(b)* any question of international law;
   - *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation;
   - *(d)* the nature and extent of the reparation to be made for the breach of an international obligation.
2. This Declaration shall not apply, however, to the following disputes to which the Republic of Honduras may be a party:
   - *(a)* disputes in respect of which the parties have agreed or may agree to resort to other means for the pacific settlement of disputes;
   - *(b)* disputes concerning matters subject to the domestic jurisdiction of the Republic of Honduras under international law;
   - *(c)* disputes relating to facts or situations originating in armed conflicts or acts of a similar nature which may affect the territory of the Republic of Honduras, and in which it may find itself involved directly or indirectly;
   - *(d)* disputes referring to:
     - (i) territorial questions with regard to sovereignty over islands, shoals and keys; internal waters, bays, the territorial sea and the legal status and limits thereof;
     - (ii) all rights of sovereignty or jurisdiction concerning the legal status and limits of the contiguous zone, the exclusive economic zone and the continental shelf;
     - (iii) the airspace over the territories, waters and zones referred to in this subparagraph.
3. The Government of Honduras also reserves the right at any time to supplement, modify or withdraw this Declaration or the reservations contained therein by giving notice to the Secretary-General of the United Nations.
4. This Declaration replaces the Declaration made by the Government of Honduras on 20 February 1960.

National Palace, Tegucigalpa, D.C., 22 May 1986.

(Signed) José AZCONA H.,
President of the Republic.

(Signed) Carlos LOPEZ CONTRERAS,
Secretary of State for Foreign Affairs.

Document B

(Translation)

ORGANIZATION OF AMERICAN STATES

30 June 1986.

Dear Ambassador,

I have the honour to acknowledge receipt the Note of Your Excellency No. 39/86/MPH/OEA/SG, of 29 May 1986, whereby you forwarded to me Official Letter No. DSM-206/86 of 26 May 1986 sent to you by His Excellency the Minister of Foreign Relations of Honduras, accompanied by the Declaration of the Government of Honduras on the amendments introduced concerning the acceptance of the jurisdiction of the International Court of Justice in view of the fact that the terms of the said amending Declaration are also applicable to Article XXXI of the American Treaty on Peaceful Solutions.

As regards this matter, I have the pleasure of informing Your Excellency that on 30 June 1986 the above-mentioned Official Letter and Declaration have been sent to the Missions and Delegations of the Member States and also to the Secretary-General of the United Nations for the relevant purposes.

I avail myself of this opportunity to renew to the Ambassador the assurances of my highest consideration.

João Clemente BAENA SOARES,
Secretary General.

His Excellency Doctor Herman Antonio Bermudez,
Ambassador, Permanent Representative of Honduras
to the Organization of American States, Washington, D.C.

Annex 41

COMMUNICATION OF THE TEXT OF DECREE NO. 79/86 TO THE PERMANENT REPRESENTATIVES OF THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES (COLOMBIA, ECUADOR, PARAGUAY, ETC.) BY THE SECRETARY GENERAL OF THE ORGANIZATION OF AMERICAN STATES, 30 JUNE 1986

ORGANIZATION OF AMERICAN STATES

30 June 1986.

Your Excellency:

I have pleasure in sending Your Excellency a copy of Official Communication No. DSM-206/86 of 26 May 1986 addressed to me by His Excellency the Minister for Foreign Relations of Honduras through the Permanent Mission at this Organization, together with the declaration by the Honduran Government relating to the modification introduced by the acceptance of the jurisdiction of the International Court of Justice, in view of the fact that the terms of the said modificatory declaration are likewise applicable to Article XXXI of the American Treaty on Pacific Settlement.

I take the opportunity to express my sincere regards.

(Signed) João Clemente BAENA SOARES,
Secretary General.

Annex 42

NOTE OF THE MINISTER OF FOREIGN RELATIONS OF HONDURAS TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE, 29 AUGUST 1986

[See **II**, *Correspondence, No. 7]*

Annex 43

DECREE NO. 75-86 OF 22 MAY 1986 OF THE NATIONAL CONGRESS OF THE REPUBLIC OF HONDURAS, *LA GACETA*, NO. 24.936, 4 JUNE 1986

[Spanish text not reproduced]

(Translation)

DECREE NUMBER 75-86

THE NATIONAL CONGRESS

Decrees

Article 1. Authorizes the Ministry of Foreign Relations to formulate the declaration referred to in subparagraph 2 of Article 36 of the Statute of the International Court of Justice, in the following terms:

1. It recognizes as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:

   (a) the interpretation of a treaty;
   (b) any question of international law;
   (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
   (d) the nature and extent of the reparation to be made for the breach of an international obligation.

2. This Declaration shall not apply, however, to the following disputes to which the Republic of Honduras may be a party:

   (a) disputes in respect of which the parties have agreed or may agree to resort to other means for the pacific settlement of disputes;
   (b) disputes concerning matters subject to the domestic jurisdiction of the Republic of Honduras under international law;
   (c) disputes relating to facts or situations originating in armed conflicts or acts of a similar nature which may affect the territory of the Republic of Honduras, and in which it may find itself involved directly or indirectly;
   (d) disputes referring to:

      (i) territorial questions with regard to sovereignty over islands, shoals and keys; internal waters, bays, the territorial sea and the legal status and limits thereof;
      (ii) all rights of sovereignty or jurisdiction concerning the legal status and limits of the contiguous zone, the exclusive economic zone and the continental shelf;
      (iii) the airspace over the territories, waters and zones referred to in this subparagraph.

3. The Government of Honduras also reserves the right at any time to supplement, modify or withdraw this Declaration or the reservations contained therein by giving notice to the Secretary-General of the United Nations.
4. This Declaration replaces the Declaration made by the Government of Honduras on 20 February 1960.

Article 2. The current decree renders null and void Decree No. 99 of 29 January 1960 and will enter into effect on the day of its publication in the Official Journal *La Gaceta*.

Made in the city of Tegucigalpa, Municipality of the Central District, in the Assembly Room of the National Congress on 21 May 1986.

Hector Orlando GOMEZ CISNEROS,
President.

Teofilo Norberto MARTEL CRUZ,
Secretary.

Armando ROSALES PERALTA,
Secretary.

To the Executive Power
For Action

Tegucigalpa, D.C., 22 May 1986.

(Signed) José Simon AZCONA HOYO,
President.

The Secretary of State in the Ministry of
Foreign Relations, by law,
Guillermo CACERES PINEDA.

Annex 44

TRANSLATIONS OF THE DECLARATION OF HONDURAS OF 22 MAY 1986 ACCEPTING THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE, FOR PUBLICATION IN THE *YEARBOOK* OF THE INTERNATIONAL COURT OF JUSTICE FOR 1985-1986. A: ENGLISH TEXT; B: FRENCH TEXT.

[See **II**. *Correspondence, No. 12]*

Annex 45

Note from the Charge d'Affaires of the Embassy of Honduras in the Netherlands to the Registrar of the International Court of Justice, 24 April 1984

Le 24 avril 1984.

Monsieur le Greffier,

J'ai l'honneur, suivant les instructions reçues de mon gouvernement, de vous adresser ci-joint copie de la note que le Gouvernement du Honduras vous transmet par l'intermédiaire de S. Exc. le Secrétaire général des Nations Unies.

Je saisis cette occasion pour renouveler à Monsieur le Greffier les assurances de ma plus haute considération.

(Signé) Arias DE SAAVREDA Y MUGUELAR,
Chargé d'affaires a.i.

(Transcription)

Embajada de Honduras,
Johan van Oldenbarneveltlaan 85,
2582 NK La Haya.

(Traduction non officielle)

O. n° 252 D.A.

(Télex)

Tegucigalpa, le 18 avril 1984.

Son Excellence Monsieur Javier Pérez de Cuéllar,
Secrétaire général de l'Organisation des Nations Unies, New York, N.Y., USA.

Monsieur le Secrétaire général,

J'ai l'honneur de présenter mes compliments à Votre Excellence à l'occasion de vous exprimer la grave préoccupation du Gouvernement du Honduras au sujet des nouvelles démarches internationales entreprises par le Gouvernement du Nicaragua afin de soustraire à la compétence du moyen de solution pacifique spécial promu par le groupe de Contadora, formé par la Colombie, le Mexique, le Panama et le Venezuela, la solution de la crise politique, économique, sociale et de sécurité qui frappe la région centraméricaine et dont la nature complexe exige une solution globale et multilatérale.

Il est de la connaissance de Votre Excellence que cette crise est le résultat du débordement des conflits internes de quelques pays de la zone, du manque de respect aux droits de l'homme, du sous-développement économique et social et très spécialement de la course aux armements et de l'accroissement démesuré des forces armées du Gouvernement du Nicaragua, engagé à promouvoir le déséquilibre des gouvernements voisins par l'encouragement, le financement, l'entraînement en la prestation d'assistance logistique et de communications aux groupes insurgés d'autres pays centraméricains avec le but d'instaurer des gouvernements qui lui soient proches.

C'est précisément pour chercher une solution intégrale à la crise centraméricaine que le groupe de Contadora proposa une négociation directe entre les Etats de la région, qui fut acceptée par le Gouvernement du Honduras et à laquelle il donna son appui le plus large en participant activement à toutes les réunions convoquées par ce même groupe.

Le Gouvernement du Honduras présenta le 4 avril 1983, au sein du Conseil permanent de l'Organisation des Etats américains, un projet de résolution aux fins de pacification de la zone centraméricaine. A la demande du groupe de Contadora, présentée au même Conseil par le représentant permanent de la Colombie, le Honduras accepta la suspension de la discussion dudit projet de résolution afin que les négociations directes promues par ce groupe de pays membres de l'Organisation des Etats américains aient l'opportunité d'aboutir à des résultats positifs.

A ce sujet, S. Exc. le ministre mexicain des relations extérieures, M. Bernardo Sepulveda, a reconnu, dans la conférence de presse tenue dans la capitale de son pays le 13 avril 1983, que l'attitude conciliatoire montrée par le Honduras au sein de l'Organisation des Etats américains a rendu possible les gestions entamées par le groupe de Contadora. Le ministre mexicain, se référant à la réunion tenue à Panama par les ministres qui intègrent le groupe et qui décidèrent leur intervention a dit textuellement:

> «On s'avisa dans une première instance que le plus urgent était de s'assurer que le Conseil permanent de l'OEA n'inhibait pas l'action des ministres membres du groupe Contadora dans leur initiative pour trouver des formules de solution en Amérique centrale. Il s'agissait là d'une question urgente, car le Conseil permanent de l'OEA devait examiner un projet de résolution présenté par le Honduras ce même lundi après-midi. Heureusement et grâce à une série de conversations tenues avec d'autres parties intéressées dans cette question, il fut accordé d'ajourner son étude au sein du Conseil permanent, permettant ainsi de transférer la question de la tribune régionale à celle de Panama, c'est-à-dire aux ministres des affaires étrangères du groupe Contadora. En même temps on a compris l'opportunité de faire une démarche auprès des Nations Unies pour qu'elles s'abstiennent de toute action qui doublerait celle qui venait de s'entamer à Panama lundi dernier. Les parties intéressées ont accueilli avec beaucoup d'intérêt la proposition qu'on leur faisait et elles ont décidé de demander au Conseil permanent de l'OEA l'ajournement de la question. Celle-ci fut la première action prise à ce sujet et qui, je répète [déclara le ministre Sepúlveda], nous laissa libres quant à la capacité d'action pour assumer la juridiction directe sur ce sujet.»

Au cours de plus d'une année de négociations multilatérales délicates, nous avons pu constater l'appui très large reçu par le groupe de Contadora, tant de la part de l'Organisation des Etats américains (AG/rés. 675-XIII-O/83) comme de l'Assemblée générale (rés. 38/10), du Conseil de sécurité de l'Organisation des Nations Unies (rés. 530 (1983)) ainsi que de la part de la communauté internationale en général, sans distinction de systèmes idéologiques, politiques, économiques ou juridiques.

C'est pour cette raison que le Gouvernement du Honduras considère nécessaire et du plus grand intérêt pour les Etats de la région centraméricaine et autres Etats pacifiques que le groupe de Contadora poursuive ses efforts dans la recherche d'une paix durable et stable pour la région, sans que cette procédure soit exposée à la frustration par le recours qu'un pays pourrait faire à d'autres moyens de règlement pacifique.

D'accord avec cette thèse, partagée par la majorité des pays centraméricains et par le groupe de Contadora, le Gouvernement du Honduras tient à signaler le danger que supposerait le traitement simultané de la crise centraméricaine par des différentes instances internationales — comme l'a prétendu le Gouvernement du Nicaragua lorsque des négociations directes sont déjà en cours. Cette thèse s'est vue confirmée par le renvoi de la question centraméricaine au groupe de Contadora, avec l'appui inconditionnel du Conseil de sécurité des Nations Unies, de l'Assemblée générale de cette même organisation et de l'Assemblée générale de l'Organisation des Etats américains.

Le Gouvernement du Nicaragua essaie de nouveau de se jouer du procès de négociations de Contadora en prétendant soumettre la crise centraméricaine — de nature essentiellement politique — à la connaissance et résolution de la Cour internationale de Justice, au détriment des négociations en cours et en méconnaissant même les résolutions de l'Organisation des Nations Unies, de l'Organisation des Etats américains et l'appui international total qu'a mérité cette voie de pacification.

Il va sans dire que les négociations poursuivies par les pays de l'Amérique centrale dans le cadre de Contadora sont clairement autorisées par l'article 52 de la Charte de l'ONU et par l'article 23 de la Charte de l'OEA, qui favorisent les accords régionaux des différends.

Le Gouvernement du Honduras, sans participer ni prétendre intervenir de quelque manière que ce soit, dans la procédure entamée par le Nicaragua contre les Etats-Unis d'Amérique devant la Cour internationale de Justice, observe avec préoccupation la possibilité qu'une éventuelle résolution de la Cour puisse affecter la sécurité du peuple et de l'Etat du Honduras qui dépend en grande partie des accords bilatéraux et multilatéraux de coopération internationale en vigueur — accords publics et dûment enregistrés au Secrétariat général de l'ONU — si de manière directe et unilatérale on essayait de restreindre ces accords, ce qui aurait pour résultat de laisser mon pays dans une situation sans défense.

Le Gouvernement du Honduras juge aussi qu'ayant été approuvé à l'unanité au sein du groupe de Contadora le 9 septembre 1983 le «document d'objectifs» qui comprend la totalité des problèmes qui constitue la crise centraméricaine dans ses diverses manifestations, et que se trouvant en outre en cours les négociations entamées par les cinq pays centraméricains dans les trois commissions de travail créées à cet effet, il est nécessaire que cette procédure continue sans être perturbée par la soustraction de la matière de sa compétence.

Vu les raisons ci-dessus exposées et vu la demande introduite par le Nicaragua devant la Cour en indication de mesures conservatoires dans la procédure entamée par le Nicaragua contre les Etats-Unis d'Amérique, je prie Votre Excellence de bien vouloir transmettre, avec l'urgence requise par le cas d'espèce, à M. le Greffier de la Cour internationale de Justice, le texte de cette note, qui contient les préoccupations du Gouvernement du Honduras sur les effets que ces mesures pourraient avoir sur la négociation en cours ainsi que sur la sécurité internationale de l'Etat du Honduras.

Je saisis cette occasion pour exprimer à Votre Excellence les assurances de ma plus haute considération.

Arnulfo PINEDA LOPEZ,
ministre des relations extérieures
en exercice.

Annex 46

Excerpt concerning Honduras from the Report of the High Commission for Refugees (UNHCR), 1985-1986 (United Nations Document A/AC.96/677 (Part V), Pp. 12-16), 15 July 1986

[Not reproduced]

Annex 47

Human Rights of the Nicaraguan Population of Miskito Origin. A: Report of the Inter-American Commission of Human Rights: Table of Contents and Introduction (OEA/Ser.L/V/II.62, Doc. 10, Rev. 3), 29 November 1983; B: Excerpts from the Periodical *La Tribuna* of Tegucigalpa, concerning the Exodus of the Miskito Population of Nicaragua under the Direction of the Bishop of Bluefields, Monsignor Salvador Schlaefer, 24 December 1983

[Not reproduced]

Annex 48

(Translation)

CHRONOLOGY OF INCIDENTS WITH THE REPUBLIC OF NICARAGUA, ACCORDING TO THE CERTIFICATES OF THE MINISTRY OF FOREIGN RELATIONS OF HONDURAS

A. FROM 29 JULY 1979 THROUGH 19 NOVEMBER 1981

	Date	*Incident*	*Place*
	1979		
(1)	29.07.79	Violation of national territory, theft of a gun, and threats against members of the Armed Forces	El Pedregalito
(2)	06.08.79	Violation of national territory and kidnapping	Dos Quebradas
(3)	07.08.79	Mining of blind passages at the border by the SPA. Confrontation with a Sandinista patrol of 400 men	Trojes sector
(4)	03.09.79	Attack upon Mr. Francisco Varela Lopez	Aldea de Hato Nuevo
(5)	04.09.79	Violation of national territory and kidnapping	El Carrizal Prieto
(6)	04.09.79	Violation of national territory and murder of three Nicaraguan refugees	El Carrizal Prieto
(7)	05.09.79	Kidnapping of Messrs Armando Araujo and Esteban Mendoza	Algodonera Guadalupe
(8)	05.09.79	Release of Mr. Esteban Mendoza following payment of a ransom of L. 150,000.00	El Triunfo
(9)	08.09.79	Release of Mr. Armando Araujo	
(10)	09.09.79	Attack against the customs house at El Guasaule, during which a Guatemalan and a Costa Rican citizen were injured	El Guasaule Customs
(11)	18.09.79	Violation of territorial waters	Arrecife Lagarto
(12)	20.09.79	Kidnapping of Messrs Victor Hugo Herrera and Rodolfo de Jesus Herrara (Hondurans), who were later murdered by *Chan*, the leader of Cusmapa	Santa Rita

	Date	*Incident*	*Place*
(13)	27.09.79	Violation of national territory and theft	Aldea El Sombrerito
(14)	28.09.79	Request made by Mr. Birned Dwtt Haylock for the liberation of Bote Haylock Prizze, kidnapped by the SPA	
(15)	03.10.79	Violation of national territory by a group of guerrillas, who established themselves in the home of Mrs. Edelvina Morales Sarmiento	El Espino
(16)	04.10.79	Violation of national territory	Aldea de Terrero
(17)	13.10.79	Violation of national territory	Paso Largo Madrigales
(18)	16.10.79	Violation of national territory	El Horno
(19)	28.10.79	Violation of national territory	Palo Verde
(20)	01.11.79	Violation of national territory	La Fraternidad Customs
(21)	21.11.79	Violation of national territory and attack against the police of Hacienda	San Benito
(22)	05.11.79	Violation of airspace	Border zone
(23)	08.11.79	Hijacking of the fishing boat *Castilla III* and theft of a cargo of 35,000 shrimps	Between Cabo Falso and Cabo de Gracias a Dios
(24)	18.11.79	Violation of national territory and theft of livestock	Aldea Las Canoas
	1980		
(25)	21.01.80	Machine-gunning of a Honduran helicopter	Between Cifuentes and Trojes
(26)	04.03.80	Violation of national territory and attack against a patrol	El Encanto
(27)	05.03.80	Violation of national territory	El Encanto
(28)	10.03.80	Violation of territorial waters and hijacking of the lobster fishing boat *Vera-Gil* with its crew	Sector of Gracias a Dios
(29)	15.03.80	Liberation of the fishing boat *Vera-Gil* and its crew. The cargo of shellfish was confiscated by the SPA	
(30)	07.05.80	Violation of national territory and attacks and theft against civilians	La Caguasca
(31)	14.04.80	Violation of airspace	El Nance Dulce
(32)	19.05.80	Violation of territorial waters and theft of a "panga", a "trasmayo" and a motor	Honduran waters near Pto. de Potosi

	Date	*Incident*	*Place*
(33)	04.06.80	Violation of national territory	Los Achiotes
(34)	23.06.80	Attack against civilians	Aldea El Anonal
(35)	12.08.80	Violation of airspace and violation of national territory	Sector of San Antonio de Flores
(36)	16.08.80	Violation of airspace	Aldea de Cacamuya
(37)	30.08.80	Violation of national territory and theft of livestock	El Estribo
(38)	31.08.80	Violation of national territory and kidnapping of a minor	Hacienda "El Suspiro del Zarzal"
(39)	01.09.80	Violation of national territory	El Ayote
(40)	25.09.80	Violation of national territory	Sector of Las Mesas
(41)	30.10.80	Armed confrontation between a Honduran patrol based in San Benito and the SPA	Palo Verde
(42)	09.11.80	Violation of airspace and bombing of Honduran territory	Tempisque and Oropoli
(43)	09.11.80	Violation of airspace	Sector of Duyure and San Marcos de Colon
(44)	10.11.80	Violation of airspace: a Nicaraguan type H500C helicopter was captured, with three crew members and equipment	Duyure
(45)	24.11.80	Violation of airspace	Alauca
(46)	29.11.80	Violation of national territory, attack on a civilian, and kidnapping of Mr. Eliseo Ordonez Calderon	El Malacate
(47)	29.11.80	Violation of territorial waters: the boat *Comandante Che* and its crew were captured	Honduran waters in the Pacific Ocean
(48)	01.12.80	Violation of national territory and kidnapping	Between Las Manos and Jicaro Galan
(49)	03.12.80	Violation of national territory and kidnapping	Aldea Tapalchi
(50)	13.12.80	Violation of airspace	La Fraternidad
(51)	26.12.80	Violation of national territory, kidnapping and murder of civilians	Las Minas and El Guanacaste
(52)	29.12.80	Violation of national territory and kidnapping	Cacamuya
	1981		
(53)	27.01.81	Violation of airspace and attack against a Honduran patrol	Tierra Colorada
(54)	12.02.81	Violation of national territory and kidnapping	El Espinal

	Date	*Incident*	*Place*
(55)	07.03.81	Violation of national territory, attack against Honduran citizens, and theft	Agua Caliente Trojes
(56)	10.03.81	Attack against a military detachment	La Estrella
(57)	24.04.81	Attack against a Honduran customs post	Guasaule Customs
(58)	27.04.81	Attack against a Honduran customs post	Guasaule Customs
(59)	28.04.81	Violation of national territory, attack against Armed Forces	El Estribo
(60)	30.05.81	Violation of national territory. Four members of the SPA were captured	Trojes
(61)	02.06.81	Attack against a Honduran post	Cifuentes
(62)	10.06.81	Violation of national territory. Attack against a Honduran post	San Benito sector
(63)	25.07.81	Attack against a Honduran patrol	Honduran waters in the Gulf of Fonseca
(64)	26.07.81	Violation of territorial waters, attack against fishermen, kidnapping and theft	Honduran waters, Estero El Torcidito
(65)	30.07.81	Attack against Honduran fishermen	Boca de San Bernardo
(66)	31.07.81	Attack against Honduran fishermen	Arrecife Alargado and Soutcha
(67)	08.09.81	Violation of airspace	Suji and Mocoron
(68)	11.10.81	Violation of territorial waters and hijacking of the boats *Lady* and *Alda* and their crews	Honduran territorial waters
(69)	19.10.81	Attack against a Honduran patrol, disappearance of the Honduran soldier Oscar Manuel Garcia Ochoa. The Chief of the First Region of Nicaragua later communicated that the body of this soldier had been found on his territory and that it had been placed there with its equipment at about 22.00 hours that day; the promise was not kept, and Commander Pichardo stated by telephone that the body would be handed over on 21 October as a result of governmental-level action	
(70)	21.10.81	Attack against a Honduran patrol	Caserio El Coyol

	Date	*Incident*	*Place*
(71)	22.10.81	Violation of national territory	El Estribo
(72)	25.10.81	Violation of national territory and kidnapping of five Hondurans	Caserio Las Moras
(73)	26.10.81	Harassment of Armed Forces	La Fraternidad
(74)	17.11.81	Attack against the police of Hacienda	El Pilon
(75)	17.11.81	Shooting and fire attacks against a Honduran customs post	El Guasaule
(76)	17.11.81	Attack against Honduran positions	Palo Verde sector
(77)	17.11.81	Attack against Armed Forces	Palo Verde
(78)	18.11.81	Attack against a Honduran military detachment	El Tablazo
(79)	19.11.81	Mortar attack against a Honduran military detachment	El Tablazo

B. FROM 19 JANUARY 1982 THROUGH 17 JULY 1986

1982

(1)	19.01.82	Armed attack	El Tablazo
(2)	19.01.82	Armed attack	El Tablazo
(3)	20.01.82	Firing against a patrol	Palo Verde
(4)	21.01.82	Fusillade against Teniente Funez	
(5)	30.01.82	Violation of territory and harassment of Honduran patrol	Palo Verde
(6)	06.02.82	Overflight of the territory by a Nicaraguayan plane and arson of the home of Mr. Tico Colomer	Leymus, Suji, Dulsuma Rus-Rus, and Auca; Turvenlancha
(7)	07.02.82	Disappearance of Secundino Nanzanarez Cruz	Aldea La Esperanza
(8)	10.02.82	Armed attack	El Coyol
(9)	16.02.82	Violation of territory; capture of Luis Caceres Torres and his fighting equipment	Ourique de Oro
(10)	23.02.82	Armed attack	La Lima, Alauca
(11)	28.02.82	Armed attack against two civilians and kidnapping	Montana San Jose
(12)	15.03.82	Violation of territorial waters and armed attack; injury to Corporal Mario Ramos	Punta Condega
(13)	17.03.82	Violation of territorial waters, kidnapping of the Honduran crew of the *Debbie K*	Iralaya

	Date	*Incident*	*Place*
(14)	17.03.82	Violation of territorial waters and attack against a Honduran patrol: injury to Corporal Mario Roberto Ramos	
(15)	17.03.82	Violation of territorial waters and hijacking of the fishing boat *Baby Jones* and its crew members	
(16)	18.03.82	Violation of territorial waters and hijacking of the boat *Derveeqee* and 48 lobster fishing boats	Raya
(17)	19.03.82	Kidnapping of two civilians (Susana and Maria Rubio)	El Coyol
(18)	19.03.82	Violation of territorial waters and hijacking of the boat *Treebo* and its crew	Raya
(19)	21.03.82	Violation of territorial waters: hijacking of four fishing boats	Islas del Cisne
(20)	21.03.82	Violation of territorial waters: and hijacking of four Honduran ships. Firing against two Honduran airforce planes sent to verify the incident	Media Luna, Pobel
(21)	25.03.82	Fusillade against a soldier of the police of Hacienda	El Pilon
(22)	02.04.82	Violation of national territory: kidnapping of five Hondurans	El Triunfo
(23)	03.04.82	Violation of national territory and kidnapping of Aurelio Amador	El Triunfo
(24)	03.04.82	Violation of airspace	Madrigales
(25)	03.04.82	Violation of national territory and kidnapping of 6 Honduran citizens	El Pilon and El Coyol
(26)	04.04.82	Violation of national territory. Capture of 21 Nicaraguans	
(27)	11.04.82	Violation of territorial waters and kidnapping	Cayo Media Luna
(28)	18.04.82	Violation of territorial waters and attack	Playa Punta San José
(29)	30.04.82	Violation of airspace	Rio Guasaule strip
(30)	16.05.82	Violation of national territory, kidnapping and murder	Caguasca sector
(31)	01.06.82	Violation of national territory and kidnapping	Comunidad de Oyoto
(32)	03.06.82	Harassment of border patrol	Comunidad El Coyol

	Date	*Incident*	*Place*
(33)	04.06.82	Harassment of border patrol	El Coyol
(34)	21.06.82	Violation of airspace	El Guineo
(35)	23.06.82	Violation of national territory and murder of a peasant	El Anonal
(36)	06.07.82	Armed attack	Alto and La Guaruma
(37)	06.07.82	Violation of national territory and attack; theft	El Oyote
(38)	06.07.82	Armed attack	Alto and La Guaruma
(39)	06.07.82	Armed attack	Alto and La Guaruma
(40)	10.07.82	Violation of airspace	Duyusupo
(41)	10.07.82	Violation of airspace	Palo Verde
(42)	14.07.82	Armed attack. Five deaths	Guaruma and Alto
(43)	15.07.82	Violation of territorial waters and hijacking of the boat *Bonne Soire* and its crew	Cayos Media Luna
(44)	15.07.82	Violation of territorial waters and kidnapping	Cayos Babel
(45)	15.07.82	Armed attack. Various injuries	La Guaruma and Alto
(46)	16.07.82	Violation of airspace	Arenales and Sababa Grande
(47)	17.07.82	Violation of airspace	
(48)	20.07.82	Violation of national territory, armed attack and harassment of Honduran villages	Comunidad La Ceiba
(49)	20.07.82	Violation of territorial waters and hijacking of the boat *Lady Madeleine*	
(50)	20.07.82	Armed attack	Comunidad La Ceiba
(51)	01.08.82	Violation of airspace	Ahuasvila
(52)	04.08.82	Violation of airspace	San Marcos de Colon
(53)	04.08.82	Violation of airspace	La Fraternidad
(54)	05.08.82	Armed attack with short- and long-range weapons	La Guaruma, El Alto and La Palmita. Carta Concepcion de Maria
(55)	05.08.82	Violation of national territory and attack, destruction of the house and theft from a cantonal corporal and his family	El Oyoto
(56)	05.08.82	Armed attack	Guaruma and El Alto
(57)	06.08.82	Armed attacks and harassment on Honduran territory	La Guaruma, El Alto and La Palmita
(58)	07.08.82	Violation of national territory	Hacienda San Enrique, Dept. of Choluteca
(59)	10.08.82	Violation of airspace	Duyusupo

	Date	*Incident*	*Place*
(60)	10.08.82	Violation of airspace	Comunidad de Palo Verde
(61)	10.08.82	Violation of airspace	La Fraternidad
(62)	13.08.82	Violation of airspace and kidnapping	La Pena
(63)	16.08.82	Violation of airspace	Palo Verde
(64)	16.08.82	Violation of airspace	Honduran Customs (Palo Verde sector)
(65)	16.08.82	Violation of airspace	Palo Verde sector
(66)	20.08.82	Violation of national territory	Palo Verde
(67)	20.08.82	Provocation in the border zones	Palo Verde
(68)	28.08.82	Provocation against Honduran people	La Guaruma sector, Cerro La Mona sector
(69)	28.08.82	Violation of national territory. Threats against the people	Guaruma
(70)	28.08.82	Mortar and machine-gun fire	Guaruma sector, Cerro de la Campana
(71)	29.08.82	Fusillade and mortar fire and violation of airspace	Guaruma, Aguacate and Las Manos
(72)	01.09.82	Violation of territorial waters and airspace	Guapinol, Gulf of Fonseca
(73)	01.09.82	Violation of territorial waters, violation of airspace	Gulf of Fonseca
(74)	04.10.82	Violation of national territory and murder	Oyoto sector
(75)	12.10.82	Provocation of Honduran people	La Guaruma
(76)	13.10.82	Violation of national territory and kidnapping	Guasaule
(77)	13.10.82	Mortar attack	Las Guarumas
(78)	25.10.82	Provocation of Honduran customs officers	La Fraternidad frontier post
(79)	25.10.82	Provocation of Honduran customs officers	La Fraternidad sector
(80)	04.11.82	Hijacking of two fishing boats and their crews	
(81)	05.11.82	Violation of airspace and dropping of bombs	Ahuasvila
(82)	14.11.82	Provocation of Honduran garrisons	Palo Verde sector
(83)	30.11.82	Harassment on national territory	Pueblo Nuevo
(84)	02.12.82	Harassment of Honduran patrols; serious injury to a Honduran soldier	Río Iorondano sector

	Date	*Incident*	*Place*
(85)	02.12.82	Armed attack against Honduran soldier and a rescue detachment	Rio Iorondano border zone
(86)	03.12.82	Mortar fire	La Guaruma sector
(87)	05.12.82	Mortar fire	Tierra Colorada sector
(88)	08.12.82	Violation of national territory, kidnapping and murder of José Ines Gonzalez	El Revolcadero Dipillo
(89)	09.12.82	Harassment of the people: three children injured	El Coyol, Rio Guausaule
(90)	13.12.82	Armed attack	La Guaruma sector Concepcion de Maria
(91)	13.12.82	Machine-gun fire	Honduran Customs, Las Manos
(92)	13.12.82	Fusillade and machine-gun fire	Las Manos Customs
(93)	22.12.82	Murder of Teodora Hernandez	El Arenal de Hato Nuevo
(94)	24.12.82	Fusillade and machine-gun fire	La Fraternidad Customs
(95)	26.12.82	Violation of national territory and kidnapping	Sabana Yasy
(96)	26.12.82	Provocation of the Army	Palo Verde sector
(97)	26.12.82	Firing against a patrol	Palo Verde sector
	1983		
(98)	01.01.83	Mortar and machine-gun fire	Cerro del Cipres
(99)	01.01.83	Violation of national territory and armed attack	El Anonal
(100)	01.01.83	Provocation of Armed Forces	Guaruma
(101)	04.01.83	Violation of national territory and armed attack	El Anonal
(102)	11.01.83	Fusillade and machine-gun fire	Cifuentes Customs
(103)	12.01.83	Fusillade	Cifuentes Customs
(104)	13.01.83	Attack against a patrol	Palo Verde sector
(105)	17.01.83	Harassment of Armed Forces	Palo Verde sector
(106)	17.01.83	Fusillade and machine-gun fire	Cifuentes
(107)	03.02.83	Violation of national territory and attempted kidnapping	Cifuentes
(108)	07.02.83	Violation of airspace and harassment of a Honduran boat	Cabo Gracias a Dios
(109)	08.02.83	Harassment of border posts	Palo Verde
(110)	24.02.83	Attack against a patrol	Palo Verde sector
(111)	24.02.83	Violation of national territory	Trojes
(112)	25.02.83	Attack against a patrol	El Oyoto sector
(113)	05.03.83	Harassment of a patrol	Cayambuco

	Date	*Incident*	*Place*
(114)	20.03.83	Kidnapping of four Hondurans and their two "pangas"	Punta Condega
(115)	20.03.83	Harassment of border posts	Palo Verde
(116)	27.03.83	Violation of national territory and theft of livestock	El Pilon
(117)	11.04.83	Violation of airspace	Madrigales
(118)	12.04.83	Violation of national territory, kidnapping and murder of a minor and theft of livestock	La Bruja sector
(119)	12.04.83	Violation of national territory and theft of livestock	"7 de Mayo"
(120)	14.04.83	Violation of territorial waters, attack against Honduran fishermen and hijacking of the boat *Dayana G*	Near Cayos Bobel and Media Luna
(121)	17.04.83	Violation of territorial waters and harassment of patrols	Amapala sector
(122)	19.04.83	Mortar and machine-gun fire	Palo Verde and San Benito
(123)	19.04.83	Violation of airspace	Madrigales sector
(124)	19.04.83	Provocation of Honduran fishermen, violation of territorial waters	
(125)	22.04.83	Violation of national territory, harassment of peasants	Tierra Colorada
(126)	23.04.83	Violation of national territory	Cacausca and Minis de Cacambuya
(127)	09.05.83	Violation of airspace	Cifuentes sector
(128)	10.05.83	Violation of airspace	Cifuentes sector
(129)	10.05.83	Violation of national territory	Cauguina
(130)	12.05.83	Attack against Hacienda officers	"La Canoa" sector
(131)	12.05.83	Armed attack	Guaruma, Concepcion de Maria and Cinco Pinos
(132)	13.05.83	Heavy artillery attack	La Canoa
(133)	13.05.83	Violation of national territory, kidnapping of four Hondurans and threats against a customs officer at La Fraternidad	El Caulote
(134)	16.05.83	Violation of airspace and attack against Honduran people	Cifuentes sector
(135)	22.05.83	Violation of national territory	Cifuentes sector
(136)	22.05.83	Harassment of Honduran people	El Naranjal, El Porvenir and Cifuentes
(137)	23.05.83	Violation of airspace	Caser (or de Lasupa) sector

	Date	*Incident*	*Place*
(138)	24.05.83	Violation of national territory, attack against a Honduran vehicle and its six occupants, and murder of five of them	Trojes sector
(139)	25.05.83	Harassment against Honduran vehicles and civilians	Trojes sector
(140)	28.05.83	Armed attack against a patrol	Trojes sector
(141)	08.06.83	Harassment against Honduran towns with sophisticated weapons	El Troje
(142)	08.06.83	Violation of national territory	Las Trementinas
(143)	17.06.83	Mortar fire	Cifuentes
(144)	18.06.83	Fire against a passenger bus	El Pital
(145)	18.06.83	Machine-gun fire and fusillade	Palo Verde
(146)	21.06.83	Attack against a private vehicle with anti-tank grenades. Two dead, one injured	El Porvenir
(147)	23.06.83	Attack against a wood carrier	Los Jicotes
(148)	11.07.83	Harassment of Armed Forces	Guasaule
(149)	14.07.83	Violation of national territory and murder of Mr. Secundo Maradiaga	El Terrero
(150)	24.07.83	Mortar fire and fusillade	Palo Verde sector
(151)	28.07.83	Violation of national territory	Zarzal sector
(152)	14.08.83	Provocation of Armed Forces	Las Manos
(153)	19.08.83	Violation of national territory	Las de Cacamuya
(154)	30.08.83	Mortar fire and fusillade	Palo Verde sector
(155)	06.09.83	Provocation of Armed Forces	Cifuentes
(156)	12.09.83	Violation of national territory and theft of horses	El Pilon
(157)	17.09.83	Violation of national territory and kidnapping of two Honduran citizens	Posa Redonda
(158)	23.09.83	Armed attack	Agua Caliente
(159)	24.09.83	Machine-gun fire and fusillade	Cerro El Ayote
(160)	26.09.83	Fusillade and machine-gun fire	Cifuentes
(161)	04.10.83	Violation of national territory and attack against the home of Mr. Santos Perez Calix	Cifuentes
(162)	10.10.83	Violation of territorial waters	Punta Condega
(163)	10.10.83	Violation of national territory and armed attack	Guaruma
(164)	04.11.83	Attack against helicopter from Nicaraguan territory	Guaruma

	Date	*Incident*	*Place*
(165)	11.11.83	Harassment of border posts	Cifuentes sector
(166)	12.11.83	Attack against a vehicle	Cifuentes
(167)	13.11.83	Machine-gun fire and fusillade against border posts	Cifuentes, Trojes
(168)	18.11.83	Attempted attack against a Honduran post	Cementerio sector
(169)	18.11.83	Provocation of Honduran people	La Guaruma
(170)	27.11.83	Violation of national territory and kidnapping	Hacienda San Juan
(171)	12.12.83	Violation of national territory	La Ceiba sector
	1984		
(172)	03.01.84	Violation of national territory and attempted kidnapping	Sacat-Kiwastara
(173)	05.01.84	Violation of national territory and treacherous murder. Eleven dead and two injured	Sacat-Kiwastara
(174)	07.01.84	Explosion of a mine. One dead	
(175)	07.01.84	Violation of national territory and theft of livestock	El Sombrerito sector
(176)	07.01.84	Provocation of Armed Forces	Palo Verde sector
(177)	07.01.84	Attack against naval detachment	Punta Condega
(178)	11.01.84	Provocation. Murder	Carretera de Trojes
(179)	17.02.84	Fusillade	El Pedregalito
(180)	15.03.84	Violation of national territory	
(181)	20.03.84	Violation of national territory and theft of livestock	Nance Dulce
(182)	20.03.84	Violation of national territory	Guaruma
(183)	22.03.84	Violation of national territory and theft of livestock	Hacienda La Flor (El Triunfo)
(184)	22.03.84	Mining of national territory by the SPA	Matano de Platano, Cerro La Picona and Cifuentes
(185)	04.05.84	Fusillade against El Espino border post	El Espino
(186)	08.05.84	Shooting-down of a helicopter of the Honduran Air Force, death of its crew	
(187)	26.05.84	Mining of Honduran territory, two deaths and a serious injury	Las Champas
(188)	28.05.84	Violation of national territory and theft of livestock	El Triunfo
(189)	30.05.84	Violation of national territory and theft of livestock	Los Lirios

	Date	*Incident*	*Place*
(190)	01.06.84	Violation of national territory, kidnapping attempt	Tapalchi
(191)	04.06.84	Violation of national territory and theft of livestock	Ojo de Agua
(192)	10.06.84	Mortar fire	Sabanas Redondas
(193)	19.06.84	Violation of national territory	Cerro Peta Grande de Gualiqueme, Cerro El Variador and Minas de Cacamuya
(194)	19.06.84	Violation of national territory. Attack against Honduran military post	Duyusupo
(195)	02.07.84	Violation of national territory and attack	San Marcos de Colon
(196)	02.07.84	Attack against the fishing boat *Cap-D L-Mark* with loss of life of fisherman Desiderio Harry Walter	
(197)	10.10.84	Confrontation between Nicaragua and El Salvador	Waters of the Gulf of Fonseca
	1985		
(198)	04.01.85	Attack against the national territory	La Lodosa
(199)	11.01.85	Capture of two Honduran fishing boats (*S.E.A. Golfo* and *Capitan Cholo*)	Between Cabo de Gracias a Dios and Cabo Falso
(200)	12.01.85	Violation of national territory and kidnapping	Duyusupo
(201)	18.01.85	Violation of national territory; one dead and one injured (a 10-year-old girl)	Arenales
(202)	23.01.85	Attack against Honduran Customs	El Guasaule
(203)	26.01.85	Artillery fire	Cacamuya and La Mina
(204)	30.01.85	Violation of national territory	Palo Verde
(205)	04.02.85	Violation of airspace	Arenales
(206)	12.02.85	Artillery fire	San Marcos de La Selva
(207)	24.03.85	Murder of Honduran citizens	La Remolina, Cacayuma, El Espino
(208)	02.04.85	Violation of national territory	El Espino
(209)	18.04.85	Harassment of the Honduran boat *Tropik*	Cayos Bobel
(210)	22.04.85	Heavy bombing	La Vega
(211)	08.06.85	Capture of two fishing boats, *Miss Colen* and *Miss Stanley*	Dept. Gracias a Dios

	Date	*Incident*	*Place*
(212)	04.07.85	Artillery fire	Alauca
(213)	05.07.85	Violation of national territory and attack against a military defence	Tapalchi
(214)	10.07.85	Violation of national territory	Maquengales
(215)	10.07.85	Mortar bombardment	La Lodosa
(216)	10.07.85	Attack against Honduran people	Cerro Calentura, Cerro El Horno, Cerro el Canton y Cerro Gengibral
(217)	22.07.85	Shooting against a Honduran patrol	La Jagua
(218)	22.07.85	Attack against Honduran people	Corrales
(219)	22.07.85	Attack against Honduran people	San Marcos de La Selva
(220)	12.08.85	Attack and theft from Honduran citizens	Las Manos
(221)	14.08.85	Attack against Honduran patrol	La Laguna
(222)	06.09.85	Attack against Honduran patrol	Las Pinas sector
(223)	07.09.85	Attack against Honduran people	La Lodosa
(224)	08.09.85	Attack against Honduran citizens	Aldeas Las Mesas
(225)	09.09.85	Fusillade	Caguasca
(226)	10.09.85	Bombing of Honduran territory	Bocay sector
(227)	13.09.85	Mortar attack	El Espanolito
(228)	10.10.85	Violation of national territory	El Tablazo
(229)	10.10.85	Attack against patrol	Duyusupo sector
(230)	10.10.85	Attack against patrol	San Benito
(231)	20.10.85	Attack against patrol	Guaruma sector
(232)	28.10.85	Attack against helicopter	Montecristo sector
(233)	28.10.85	Mining of Honduran Territory by the SPA	Quebrada del Oro
(234)	25.11.85	Fusillade against two Honduran patrols	Duyusupo sector
	1986		
(235)	02.01.86	Violation of national territory, kidnapping and theft of personal belongings and livestock	La Supa, Boca de Arenales
(236)	03.01.86	Release of Messrs José Esteban Lopez Ramos, José de la Paz Ramos, Martin Ramos and Simeon Carcamo, held by the SPA for 24 hours	
(237)	07.01.86	Fusillade against patrol	Las Pinas

	Date	*Incident*	*Place*
(238)	13.01.86	Violation of national territory and kidnapping	Tierra Colorada sector
(239)	13.01.86	Attack against Honduran people	Banco Grande, Quin. Bocas de Par Par, carta Entre Rios
(240)	14.01.86	Violation of national territory and theft from civilians	La Esperanza sector
(241)	14.01.86	Violation of national territory	Ampara sector
(242)	16.01.86	Violation of national territory	San Agustin sector, El Bosque hasta la Cuesta de Zepeda
(243)	17.01.86	Violation of national territory, murder and kidnapping	Caserio El Bosque
(244)	19.01.86	Machine-gun and fire attacks	Las Canoas
(245)	19.01.86	Violation of national territory and murder	El Boqueron
(246)	20.01.86	Violation of national territory and attack against civilian	La Polvora sector
(247)	21.01.86	Violation of national territory	San Agustin
(248)	21.01.86	Violation of national territory	Cayantu
(249)	21.01.86	Provocation of Armed Forces	Vado Ancho
(250)	22.01.86	Attack against Honduran people, two children dead, two injured	Palo Verde
(251)	22.01.86	Fusillade and grenade attack	Las Pinas
(252)	09.02.86	Attack against Honduran detachment	El Bosque
(253)	09.02.86	Fusillade	Quebrada de Arenales
(254)	10.02.86	Violation of national territory and kidnapping	La Esperanza
(255)	12.02.86	Discovery of the body of Mr. Ricardo Avilez, kidnapped by the SPA two days previously	La Esperanza
(256)	13.02.86	Violation of national territory and leaving a minefield	Tapalchi
(257)	17.02.86	Violation of national territory and kidnapping	Confluence of the Quebrada El Cacao with the Rio Guasaule
(258)	20.02.86	Violation of national territory and kidnapping	La Esperanza
(259)	22.02.86	Violation of national territory and kidnapping	La Esperanza
(260)	23.02.86	RPG-7 rockets launched	Amparo
(261)	25.02.86	Violation of national territory	Colina 800 - El Boqueron sector

	Date	*Incident*	*Place*
(262)	25.02.86	Explosion of a mine placed in national territory by the SPA. Two injured	Buena Vista
(263)	28.02.86	Fusillade against helicopter	Coordinates 9336, Carta Puerto Morazan
(264)	12.03.86	Attack against Honduran people	Cerro Bijao, San Rafael El Cerro, facing the al Valle de Tecas and Las Tejeras
(265)	14.03.86	Violation of national territory and attack against a patrol	La Esperanza and Cerro El Toro
(266)	14.03.86	Violation of national territory	Yamalito sector
(267)	14.03.86	Violation of national territory	Somu-Tigni, Yamales and Bolinkey
(268)	14.03.86	Violation of national territory	La Esperanza
(269)	14.03.86	A soldier injured by explosion of a mine placed by the SPA	Maquengales
(270)	15.03.86	Harassment of Honduran people and attack against a patrol	Las Bocas de Guano Entre Piedra sector
(271)	16.03.86	Violation of national territory	El Oro to El Rosario
(272)	17.03.86	Violation of national territory	Cano de Ulwaskin
(273)	19.03.86	Artillery fire	El Bosque
(274)	19.03.86	Artillery fire	Las Mieles sector
(275)	24.03.86	Artillery bombardment with BM-21 multiple rocket-launchers	Carta Jutiapa
(276)	25.03.86	Artillery fire	Cerro Guambuco
(277)	30.03.86	Artillery fire	Carta Trojes
(278)	07.04.86	Artillery fire	Sector between Las Colinas de Moropuchi and El Cementerio
(279)	14.04.86	Attack against Honduran positions	Cerro Guazapo, Vieja Customs, La Curva, Casa Vieja, Casa de Ladrillo facing Teotecacinte, La Tabacalera, Agua Caliente, La Tejera, Los Periodicos and El Cementerio
(280)	15.04.86	Violation of territorial waters and kidnapping	Guapinol sector
(281)	19.04.86	Explosion of a mine placed by the SPA. One dead	Arenal
(282)	26.04.86	Violation of national territory, theft and kidnapping	El Horno

	Date	*Incident*	*Place*
(283)	26.04.86	Violation of national territory, theft and kidnapping	Duyure
(284)	26.04.86	Violation of airspace	Tapalchi
(285)	30.04.86	Sandinist troop injures Honduran soldier and three civilians	Las Champas
(286)	04.05.86	Fusillade	Colina Las Trojes
(287)	05.05.86	Kidnapping	Nueva Victoria
(288)	05.05.86	Fusillade	Colina 806, co-ordinates 0155 carta Cifuentes
(289)	06.05.86	Fusillade	Palo Verde
(290)	08.05.86	Fusillade	Tapalchi
(291)	08.05.86	Violation of national territory	Paredes
(292)	15.05.86	Harassment of Armed Forces	Cifuentes
(293)	18.05.86	Attack against Armed Forces	Cifuentes
(294)	19.05.86	Violation of national territory	San Bernardo and Rio Negro
(295)	20.05.86	Discovery of the body of a Honduran citizen, death caused by explosion of a mine placed by the SPA on Honduran territory	Las Cabullas, Duyure
(296)	20.05.86	Child injured by explosion of a mine placed by the SPA on Honduran territory	La Munguia
(297)	21.05.86	Violation of Honduran territory, theft of livestock	La Laguna, Zarzalosa
(298)	23.05.86	Fusillade	Cifuentes
(299)	24.05.86	Serious injury, followed by death, of the Honduran peasant Abrahan Sanchez Sanchez who stepped on a mine placed by the SPA	El Horno
(300)	30.05.86	Violation of national territory and kidnapping attempt	La Estrella sector
(301)	01.06.86	Violation of airspace	Palo Verde
(302)	02.06.86	Kidnapping of fishermen	San Bernardo sector
(303)	07.06.86	Harassment of Armed Forces	Cifuentes
(304)	08.06.86	Violation of national territory	Palo Verde
(305)	09.06.86	Fusillade	Las Manos
(306)	10.06.86	Attack against positions of the Armed Forces	El Cerron and Vieja Customs
(307)	10.06.86	Fusillade and mortar fire	Tapalchi
(308)	11.06.86	Violation of national territory	El Horno
(309)	12.06.86	Fusillade	El Pedregalito

	Date	*Incident*	*Place*
(310)	12.06.86	Harassment of Armed Forces	Cifuentes
(311)	19.06.86	Attack against Honduran people	Guambuco
(312)	19.06.86	Violation of national territory	Palo Verde
(313)	22.06.86	Violation of national territory	Los Planes
(314)	22.06.86	Fusillade	Tapalchi sector
(315)	22.06.86	Attack against Armed Forces	Mata de Guineo
(316)	30.06.86	Violation of national territory	Mata de Guineo
(317)	30.06.86	Violation of national territory	Mata de Platano
(318)	01.07.86	Fusillade	El Bosque
(319)	09.07.86	Attack against patrol	La Guaruma
(320)	12.07.86	Attack against Honduran detachments	Vieja Customs and El Pital
(321)	12.07.86	Attack against patrol	Cerro La Trinchera
(322)	13.07.86	Firing of LM-BM21	La Garrapata
(323)	13.07.86	Attack against Honduran detachments	Capire, Las Mieles and El Bosque
(324)	13.07.86	Firing of LCM-BM21	Banco Grande
(325)	14.07.86	Fusillade against patrol	Rio Torondano
(326)	16.07.86	Firing of 120-mm grenades	Amparo
(327)	17.07.86	Fusillade	Trojes and Cifuentes
(328)	31.07.86	Violation of national territory	Bolinkey and Buena Vista
(329)	31.07.86	Attack against patrol	Tapalchi
(330)	02.08.86	Attack against naval patrols	Potosi sector
(331)	04.08.86	Violation of airspace	Cifuentes
(332)	05.08.86	Kidnapping of two fishermen	Puerto Menor sector
(333)	18.08.86	Violation of national territory	Arenales and Amparo

Annex 49

Communication of the Protests by the Government of Honduras to the Organization of American States Following the Destruction in the Gulf of Fonseca of a Honduran Helicopter

Document A

NOTE NO. 15/84 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE DATED MAY 8, 1984, SENT BY THE MINISTER OF FOREIGN AFFAIRS OF HONDURAS TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA

OEA/Ser.G
CP/INF.2159/84
9 May 1984
Original: Spanish

MISSION OF THE REPUBLIC OF HONDURAS
TO THE ORGANIZATION OF AMERICAN STATES

No. 15/84/MPH/OEA/CP May 9, 1984

Excellency

I have the honor to address Your Excellency to convey to you, and through your kindness to the representatives of the other member States on the Permanent Council, the text of the note sent by His Excellency Dr. Edgardo Paz Barnica, Minister of Foreign Affairs of Honduras, to the Minister of Foreign Affairs of Nicaragua that reads verbatim as follows:

> "Official Note No. 332-DSM. Tegucigalpa, D.C., May 8, 1984. His Excellency Miguel d'Escoto Brockmann, Minister of Foreign Affairs, Managua, Nicaragua. Excellency: I am addressing Your Excellency to present, through you, to the distinguished Government of Nicaragua, the strongest protest of the Republic of Honduras over the brutal shooting down today of a helicopter of the Honduran air force in violation of all the rules of peaceful coexistence, with the tragic result of the loss of its crew and accompanying personnel. The unarmed helicopter, identified by national markings under Registration No. UH-1B No. 928, was making a regular flight between Tegucigalpa and the port of Amapala. Because of adverse weather conditions existing in the Gulf of Fonseca, it departed from its route, and when it was returning head toward Amapala it was shot down by anti-aircraft fire from the Sandinista army, on the peninsula of Cosiguina, as reported by the Sandinista airforce. The personnel being carried by the aircraft was the following: Second Lieutenant of the Airforce Honorato Arzu, Technical Corporal Oscar Armando Flores Amador; Technical Committee: Engineer Jose Napoleon Castellanos, Mr. Alejandro Alfaro M., Auditors: Harry J. Ortiz, Roberto Turcios D., Major Hernan Barcenas, Quartermaster Corps,

> Lieutenant Francisco Suazo A., Quartermaster Corps. It should be pointed out that this committee was carrying out an eminently administrative mission, for the purpose of reviewing some work at Amapala and that it in no way had any intention of approaching Nicaraguan territory. What is totally inadmissible in this situation is that no warning was given to the helicopter, nor was any attempt made to establish radio contact with it, rather it was the victim of a clearly aggressive attitude in proceeding to shoot it down. In view of the sorrow that restrains the Honduran people over the irreparable loss of such esteemed compatriots, in such regrettable circumstances that in no way justify that despicable act, the Government of Honduras urges the distinguished Government of Nicaragua to give the necessary satisfactions for that action and cease the warlike attitudes that are endangering the peace and tranquillity of the Central American area. I also request you, Mr. Minister, to authorize the necessary provisions so that the mortal remains of our compatriots killed in that lamentable incident may be returned to our country. With assurances of my highest consideration. Edgardo Paz Barnica, Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

Roberto MARTINEZ ORDONEZ,
Ambassador

His Excellency Dr. Francisco Posada de la Peña,
Chairman of the Permanent Council,
Organization of American States,
Washington, D.C.

Document B

NOTE NO. 16/84 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE DATED MAY 9, 1984, SENT BY THE MINISTER OF FOREIGN AFFAIRS OF HONDURAS TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA

OEA/Ser.G
CP/INF.2162/84
10 May 1984
Original: Spanish.

MISSION OF THE REPUBLIC OF HONDURAS
TO THE ORGANIZATION OF AMERICAN STATES

No. 16/84 MPH/OEA/CP May 10, 1984.

Excellency:

I have the honor to address Your Excellency to convey to you, and through your kindness, to the other representatives of the member States on the Permanent Council, the text of the note sent by His Excellency Dr. Edgardo Paz

Barnica, Minister of Foreign Affairs of Honduras, to the Minister of Foreign Affairs of Nicaragua, which reads verbatim as follows:

"Official Note No. 338-DSM. Tegucigalpa, D.C., May 9, 1984. His Excellency Miguel d'Escoto Brockmann, Minister of Foreign Affairs, Managua, Nicaragua. Excellency: I am addressing Your Excellency to reject the concepts of the note of protest that you addressed to me yesterday, on account of the brutal shooting down by anti-aircraft fire of the Sandinista army, of an unarmed personnel transport helicopter of the Honduran air force. Your Excellency affirms, for obvious purposes, that it was a matter of 'two military helicopters coming from Honduran territory', when in truth it was just one helicopter that was transporting a technical committee that was to do inspection work on constructions at the naval base at Amapala. Your Excellency goes on to say that 'the helicopters having been detected by our armed forces, they proceeded to repel them, and succeeded in shooting down one of them'. It causes real indignation that the irresponsibility of the Sandinista army should have led it to 'repel', that is to say, violently to launch an armed attack against, an unarmed personnel transport helicopter. If, as Your Excellency maintains, the aircraft was detected by your armed forces, there is no justification whatever for not having followed the normal procedure in cases of this kind, that is to say, to warn the aircraft or establish radio contact with it so that it may be identified, or to order it to land. Rather it seems that when the helicopter was detected preparations were made for shooting it down. Your Excellency points out, almost with pleasure 'they . . . succeeded in shooting down one of them', a most reprehensible action that, far from being a heroic feat, is one more demonstration of the total disrespect of the Government of Nicaragua for those most elementary procedures that should be observed in such situations, above all, when the zone in which the helicopter was shot down does not appear on the air navigation charts as a restricted, prohibited, or dangerous zone. The aggressive attitude of and the use of force by the Government of Nicaragua is in contrast to the action of the Government of Honduras in similar cases. When on November 10, 1980, a helicopter of the Sandinista air force type H500C violated Honduran air space and was forced to land at the town of Duyure, Department of Choluteca, at which time the following crew members were captured: Captain Roberto Sanchez, pilot Ernesto Venerio, and journalist Carlos Duran Palavicini. The helicopter and its crew were returned unharmed, after the corresponding record of the facts had been made. In the same way, on March 13, 1982, the then Colonel of Aviation Walter Lopez Reyes, in his capacity as General Commander of the Honduran Air Force, delivered to His Excellency Dr. Guillermo Suarez Rivas, Ambassador Extraordinary and Plenipotentiary of the Republic of Nicaragua, the Douglas aircraft, type C-47 (DC-3) of mottled camouflage color Registration No. FAS-208, belonging to the Sandinista air force of the Republic of Nicaragua, which had landed in irregular circumstances on the afternoon of Sunday, March 7, at the Toncontin international airport of Tegucigalpa. For all the reasons stated, the Government of Honduras repudiates this most reprehensible act, a product of the warlike hysteria of the Government of Nicaragua. I also wish to reject the malicious statement contained in Your Excellency's note to the effect that the inscription 'U.S. Army Commander' was found on the tail of the aircraft, adding that

that fact made one presume that it was a case of a helicopter belonging to the United States armed forces. Malediction has no limits; even in such sad circumstances, the attempt is made to distort the truth and to draw an advantage out of a criminal act. The aircraft had a Honduran flag and registration of the Honduran air force (FAH) UH1-8928, of which Your Excellency perversely makes no mention. What is more, you try perversely artificially to link the flight of the helicopter with alleged 'acts of aggression' attributed to Honduras, when all the persons found aboard the unarmed helicopter were well-known Hondurans, including distinguished university professors. No artifice will be valid for the Managua régime to cover up the brutality of this act or the treachery with which it acted. This is the public explanation that the Government of Honduras offers and that Your Excellency sordidly demands. The Government of Honduras, in again rejecting the concepts and inaccuracies contained in Your Excellency's note of yesterday, reiterates its strongest protest to the Government of Nicaragua and demands the necessary satisfactions for the commission of this unjustifiable act. With the assurances of my highest consideration, Edgardo Paz Barnica, Minister of Foreign Affairs."

Accept, Excellency, the renewed assurances of my highest consideration.

(Seal and signed) Roberto MARTINEZ ORDONEZ,
Ambassador.

His Excellency Dr. Francisco Posada de la Peña,
Chairman of the Permanent Council,
Organization of American States,
Washington, D.C.

Annex 50

NOTE NO. 04/86 FROM THE AMBASSADOR, PERMANENT REPRESENTATIVE OF HONDURAS, TRANSCRIBING THE TEXT OF THE NOTE DATED MARCH 25, 1986, SENT BY THE SECRETARY OF FOREIGN AFFAIRS OF HONDURAS TO THE MINISTER OF FOREIGN AFFAIRS OF NICARAGUA

OEA/Ser.G
CP/INF.2392/86
2 April 1986
Original: Spanish.

MISSION OF THE REPUBLIC OF HONDURAS
TO THE ORGANIZATION OF AMERICAN STATES

No. 04/86/MPH/OEA/CP April 1, 1986.

Excellency:

I have the honor to address Your Excellency to convey to you, and through you to the member States represented on the Permanent Council, the text of the note dated March 25, 1986, which the Government of Honduras has addressed to the Government of Nicaragua to denounce the incursion of contingents of the Sandinista People's Army into Honduran territory in the eastern border area, Department of Olancho.

The note reads as follows:

"Tegucigalpa, D.C., March 25, 1986.

Excellency:

I am addressing Your Excellency to inform you that my Government has certain and duly confirmed reports that contingents of the Sandinista People's Army have intruded into Honduran territory in the eastern border area, Department of Olancho, and that they have fired artillery and other weapons over Honduran territory. The actions to which I refer took place last week and this week. In anticipation of an increase in the activities the Sandinista People's Army has unleashed against Honduran territory, the Government of the Republic has deployed forces toward the area in reference with orders to protect the population and to throw back the Nicaraguan troops. Upon presenting Your Excellency the above denunciation, the Government of Honduras urges the Government of Nicaragua to proceed to the immediate withdrawal of the troops of the Sandinista People's Army from Honduran territory in order to avoid confrontations that could endanger the peace between the two countries and once again compromise the regional peace-making efforts sponsored by the Contadora Group. My Government believes that the Nicaraguan Government has the inescapable obligation to deal with this denunciation being made in good faith and with the desire not to aggravate the crisis which, for reasons known to all of us, Central America has

> been experiencing since the second half of 1979. My Government, Mr. Minister, is counting on the Nicaraguan Government's taking the appropriate corrective measures and acting in the future in such a way that the events denounced will not be repeated. Accept, Excellency, the renewed assurances of my highest consideration. Carlos López Contreras, Secretary of Foreign Affairs. To His Excellency, Mr. Miguel d'Escoto Brockmann, Minister of Foreign Affairs, Managua, Nicaragua."

Accept, Excellency, the renewed assurances of my highest consideration.

Hernán ANTONIO BERMUDEZ,
Ambassador, Permanent Representative.

His Excellency Ambassador Fernando Andrade Díaz Duán,
Chairman of the Permanent Council,
Organization of American States,
Washington, D.C.

Annex 51

Incursion by the Sandinista People's Army into Honduras from 4 to 8 December 1986

(Translation)

A. CHRONOLOGY OF THE INVASION OF HONDURAS BY THE TROOPS OF THE SANDINISTA PEOPLE'S ARMY (SPA) (4 TO 8 DECEMBER 1986)

4 December: A column of about 200 men of the SPA took the Honduran town of Maquengales 7 kilometres from the border with Nicaragua which they attacked at 12.10. In that locality there was only a small garrison of the Honduran army, of 15 men.

The same day, armed Sandinista helicopters flew over Honduran territory.

5 December: The Honduran Ministry of Foreign Relations protested to its Nicaraguan counterpart regarding the events of the previous day demanding reparation for the damages caused and the release of the Honduran soldiers captured by the Sandinista troops.

6 December: The SPA attacked "Las Champas", with artillery and penetrated Moora and El Espanolito, installing positions from there to El Bosque. The SPA on the same day attacked the towns of Arenales, La Esperanza, Maquengales (again), Buena Vista, Subico and El Aburrido, small Honduran villages. At 15.00 hours, there was fighting in Buena Vista, Piedra Bola and El Espanolito. At 16.00 hours 700 men of the SPA, making up three columns, penetrated Honduran soil as far as El Guano and El Bosque.

The same day, the Ministry of Foreign Relations protested energetically to the Sandinista government, demanding that the invading troops be withdrawn from Honduran territory and warning that if this did not occur, their expulsion would be carried out.

The Nicaraguan Ministry of Foreign Relations responded by asserting that it was false that Sandinista troops had invaded Honduran territory.

7 December: Given the Nicaraguan denial, the Honduran air force received the order to bombard the Sandinista positions in Honduran territory. The army reinforced its defensive installations and advanced towards the border, with the intention of expelling the invaders.

It was calculated that at that moment approximately 2,500 Sandinista soldiers were within the national territory.

At that moment, the Sandinista troops began their retreat.

The Government of Honduras has provided to the Security Council, at the occasion of the meeting held on 10 December at the request of the Government of Nicaragua, concrete evidence of the Sandinista penetration in our territory. Amongst this evidence there appears a military instruction sheet identifying the Nicaraguan operative under the name of "General Benjamin Zeledon", as well as identity cards of SPA soldiers, which were found in national territory.

(Translation)

B. NOTE FROM THE MINISTER OF FOREIGN RELATIONS OF HONDURAS TO THE FOREIGN MINISTER OF NICARAGUA, 5 DECEMBER 1986

Telex

Tegucigalpa, D.C., 5 December 1986.

To His Excellency
Miguel d'Escoto Brockmann,
Foreign Minister,
Managua, Nicaragua.

I am writing to you to bring to your attention the following facts:

I. Yesterday, Soviet-made helicopters belonging to the Sandinista airforce overflew Honduran territory in the "Boca del Espanol" zone near the Poteca river, on a mission of re-supply and the transport of wounded people. The helicopters returned to their bases located in Nicaragua after completing their task.

II. In addition, also yesterday 4 December 1986 starting at 18.00 hours until 01.00 hour of 5 December, 200 soldiers of the Sandinista People's Army attacked and occupied the position of the national army of Honduras located in "Las Mieles", near the Poteca river. The platoon, made up of 15 members, which was defending the position, decided to regroup to defend itself in another position, given the numerical superiority of the attacking army. During the incident 3 Honduran troops were injured — Corporal Orlando Cruz Gutierrez and the soldiers Edil De Jesus Paguaga and Luis Alfredo Aplicano —, at the same time the Sandinista troops were capturing the Honduran soldiers Alfonso Urraco Diaz and Oswaldo Lopez Andrade and seized arms which were in the possession of the Honduran platoon. The attack was without warning and carried out by such a quantity of soldiers of the SPA that it was logically impossible for the Honduran soldiers to resist it.

III. The Honduran position is located approximately 7 kilometres from the border with Nicaragua and within Honduran territory. This treacherous attack of the SPA against a surveillance position of the national army of Honduras is considered by my Government as an act of extreme hostility and danger for peaceful relations between both States.

Our army has proved, beyond any doubt, that the attackers were members of the SPA who, in violation of Honduran national territory, committed an act of extreme gravity.

The Government of Honduras protests formally and energetically to the Nicaraguan Government for this act of aggression, which resulted in the injury of three Honduran soldiers and the capturing of two Honduran soldiers and demands from it an investigation, and the corresponding explanation, as well as the appropriate indemnification of the injured soldiers, and the return of the captured soldiers and arms. In addition, the immediate cessation of these acts, which escalate the political military crisis which Central America is experiencing, is demanded.

I reiterate to the Minister the assurance of my high and distinguished consideration.

Guillermo CACERES PINEDA,
Secretary of Foreign Relations by Law.

(Translation)

C. NOTE FROM THE MINISTER OF FOREIGN RELATIONS OF HONDURAS TO THE FOREIGN MINISTER OF NICARAGUA, 6 DECEMBER 1986

Telex

Tegucigalpa, D.C., 6 December 1986.

To His Excellency
Miguel d'Escoto Brockmann,
Foreign Minister,
Managua, Nicaragua.

Yesterday morning, troops of the Sandinista People's Army attacked the Honduran villages of Maquengales, Buena Vista and La Esperanza, within the jurisdiction of Trojes, in the department of El Paraiso. Information is being collected regarding the quantity of human and material losses. However, the displacement of civil population living in the area was of considerable dimensions.

This brutal attack perpetrated by the SPA against the civil Honduran population, which lives peacefully in the border zone, has escalated to an intolerable limit for the Government of Honduras and has created a situation of military crisis which does not form a part of the peace plan that the Central American countries have traced for the future of the region.

My Government presents to the Government of Nicaragua, once again, an energetic and formal protest against these acts which cannot remain without a corresponding indemnification and it is for this reason that it demands from your Government that it immediately proceed to the withdrawal of the troops of the Sandinista People's Army from Honduran territory. If within a reasonable time the high command of the SPA does not do so, the Honduran armed forces will proceed with all energy to the fulfilment of their constitutional duty of defending the national territory and the sovereignty of the country.

My Government demands, in addition, from the Nicaraguan Government, the complete indemnification of the damages caused to the civil population and the immediate cessation of all belligerent actions which are leading the democratic Governments of Central America to a war which they neither desire nor have sought.

I reiterate to the Minister my distinguished and attentive consideration.

Guillermo CACERES PINEDA,
Secretary of Foreign Relations by Law.

(Translation)

D. PRESS RELEASE NO. 091-86 CONCERNING THE MURDER OF A HONDURAN SOLDIER CAPTURED BY THE SANDINISTA FORCES, 17 DECEMBER 1986

The murder, in Honduran territory, of the soldier Hermes Oswaldo Lobo Andrade by members of the Sandinista army this past 4 December constitutes a violation of the Geneva Convention and its additional protocols, in not having respected the rights of the prisoner, even when the Sandinista incursion was not part of a declared war, because the Convention applies to any armed conflict.

Lobo Andrade was in the military post of Buena Vista, 10 kilometres within Honduran territory, with 3 other members of the 16th Infantry Battalion, when they were attacked by a well-equipped group of members of the SPA, who killed 2 of his comrades and who took him prisoner. A fourth soldier pretended to be dead and witnessed the capture of Lobo Andrade. The murder of the Honduran soldier thus juridically became the exclusive responsibility of the Sandinista government.

The Honduran soldier, in accordance with the above-cited Geneva Convention, should have received humanitarian treatment, as provided for in said Convention, which specifically condemns the murder of a prisoner. According to this international juridical instrument which regulates the treatment of prisoners, Nicaragua should, among other things, have given notification of his capture.

However, Nicaragua denied having in its power the soldier from the 16th Infantry Battalion. Indeed, the note of the Nicaraguan Government alleged that the Sandinista People's Army had not captured the soldier Lobo Andrade. It said that probably it was a case of a soldier who had got lost and who had since disappeared. In reality, the soldier who appeared was the one who had witnessed the capture of his companion in arms who was afterwards killed. Initially it appears that Lobo Andrade was identified under the name of Oswaldo Lopez Andrade.

The facts being thus, in addition to the penetration of Honduran territory, Nicaragua has committed another violation of international law and the death of this young soldier must be repudiated by all national and international sectors, who are interested in ensuring the respect of human rights.

The body of Lobo Andrade was found with three gun shots in the back which demonstrates that he was murdered, and the testimony of the surviving soldier proves that he had put down his arms, which obviously proves that he did not die in combat but was executed in cold blood.

Tegucigalpa, D.C., 17 December 1986.

Direction of Information and Press,
Ministry of Foreign Relations.

CONTRE-MÉMOIRE DU NICARAGUA (COMPÉTENCE ET RECEVABILITÉ)

COUNTER-MEMORIAL OF NICARAGUA (JURISDICTION AND ADMISSIBILITY)

Volume I

INTRODUCTION

1. Nicaragua initiated this proceeding against Honduras by filing its Application with the Court on 28 July 1986. The Application sets forth massive violations on the part of Honduras of its legal obligations under the Charters of the United Nations and the Organization of American States and under general principles of international law. In particular, it recites that continuously since 1979, Honduras has violated its international legal obligations to Nicaragua: by permitting thousands of mercenaries to establish and maintain military bases and other facilities in Honduran territory for the purpose of carrying out armed attacks in and against Nicaragua; by providing vital intelligence and logistical support to facilitate the mercenaries' attacks on Nicaragua; by actively participating, through its own armed forces, in armed attacks staged by the mercenaries inside Nicaragua; and by engaging in repeated military manœuvres with the armed forces of the United States, near the Nicaraguan border, for the purpose of intimidating Nicaragua and intervening in Nicaragua's internal affairs.

2. The jurisdiction of the Court was invoked on the basis of declarations of Nicaragua and Honduras under Article 36 of the Statute of the Court accepting the compulsory jurisdiction of the Court, and on the basis of Article XXXI of the American Treaty on Pacific Settlement (Pact of Bogotá), to which both Nicaragua and Honduras are parties.

3. Nicaragua asked the Court to adjudge Honduras to be in violation of its conventional and customary international legal obligations to Nicaragua not to use force or the threat of force against Nicaragua, and not to intervene in Nicaragua's internal affairs or violate Nicaragua's sovereignty or territorial integrity; to declare that Honduras should cease and desist from such actions; and to determine the reparations owing to Nicaragua in consequence of such transgressions. Nicaragua reserved the right to present a request that the Court indicate interim measures of protection.

4. On 29 August 1986, the Minister of Foreign Relations of the Government of Honduras advised the President of the Court that Honduras wishes to assert objections to the jurisdiction of the Court and to the admissibility of Nicaragua's Application. Accordingly, on 22 October 1986, the Court scheduled the submission of written pleadings on the questions of the Court's jurisdiction and the Application's admissibility as follows: the Memorial of Honduras was to be submitted by 23 February 1987, and the Counter-Memorial of Nicaragua was to be submitted by 23 June 1987.

5. It is the position of Nicaragua that the objections of Honduras to the jurisdiction of the Court and to the admissibility of the Application, set forth in the Memorial of 23 February 1987, are wholly without foundation.

6. Part I of this Counter-Memorial demonstrates that the Court has jurisdiction in this case under Article 36 of the Statute of the Court because the reservations to the Honduran declaration under Article 36 (2), filed on 26 May 1986, are invalid and have no legal effect.

7. Part II demonstrates that Article XXXI of the Pact of Bogota by its express terms, by the contemporaneous understanding of the parties and by the weight of expert commentary, provides a separate and independent basis of jurisdiction for the Court in this case; contrary to the position advocated by Honduras, there is no requirement that the conciliation procedure described in the Pact be invoked, or that the parties be unable to agree upon arbitration, prior to recourse to the Court. Part II further demonstrates that the purported reservations to the Pact presented by Honduras 36 years after ratifying the Pact, have no legal effect. Part II also demonstrates that:

8. After seven years of unsuccessful diplomatic efforts to resolve the issues raised in the Application, it is plain that these issues have not been capable of resolution by direct negotiation. It is equally plain that, under the Pact of Bogota, a State may not frustrate another State's right to recur to the Court merely by stating, contrary to the weight of the evidence (and contrary to its own behaviour) that "in its opinion" the dispute is capable of settlement by direct negotiation.

9. The multilateral negotiations known popularly as the Contadora process do not constitute a "special procedure" under Article II of the Pact of Bogotá, and therefore do not preclude Nicaragua from initiating other pacific procedures for resolution of the issues raised in the Application, including recourse to the Court. Moreover, the bilateral legal dispute between Nicaragua and Honduras identified in the Application is not even addressed by the Contadora process, which is instead a political solution of a series of regional controversies.

10. Part III demonstrates that even if, *arguendo*, the new reservations presented by Honduras to its declaration under Article 36 (2) of the Statute of the Court and the Pact of Bogotá were legally valid, they do not apply in the circumstances of this case and cannot serve to deprive the Court of jurisdiction either under Article 36 (2) of the Statute or Article XXXI of the Pact.

11. Part IV demonstrates that the Application is fully admissible, and in particular that it is sufficiently specific under the rules of the Court and prior decisions of the Court, and that the claims presented are legal claims fully capable of judicial resolution. Indeed, Nicaragua's legal claims are similar in nature to the ones the Court already found justiciable, and resolved, in the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*. The first part of the Honduras Memorial of 23 February 1987 (hereafter Memorial), constituting more than one-third of the Memorial, is addressed neither to the jurisdiction of the Court nor the admissibility of the Application. Rather, this part, entitled "The Background of the Dispute", addresses the merits of the Application and of the claims set forth therein. Indeed, this part sets forth various arguments (including "self-defence") that Honduras apparently intends to assert at the merits phase of this case in response to Nicaragua's claims, should the Court decide that it has jurisdiction and that the Application is admissible.

12. While Nicaragua considers it proper to await the merits phase of the case before presenting its evidence and arguments addressed to the merits of its claims, and the defences asserted in response thereto, the incompleteness of the "Background of the Dispute" presented in the Honduras Memorial makes it appropriate for Nicaragua to make certain preliminary remarks at this phase in order that the Court have the benefit of the views of both parties as to the nature of the present dispute.

13. The "Background of the Dispute" set forth in Part I of the Honduras

Memorial consists of two chapters. The first, entitled "The Present Dispute as Part of the General Conflict in Central America", purports to describe the factual context of the dispute between Nicaragua and Honduras, including, as related in Section I of this chapter, "the cause of the conflict in Central America". The incompleteness of this purported statement of the relevant facts is best shown by the omission of any reference whatsoever to the mercenary forces commonly known as the "*contras*". Nowhere in this 44-page exegesis on the facts related to the present dispute are the *contras* even mentioned. From reading the Honduras Memorial one would be surprised to learn that the *contras* exist, let alone that for more than six years — and continuing to the present day — as many as 10,000 of them have used Honduras as a base for launching military and paramilitary attacks in and against Nicaragua.

14. Honduras's role as a base of operations for the *contras* is a matter of public knowledge. It is even described in the dictionary. The 1987 edition of the *Dictionary of International Relations Terms*, an official publication of the United States Department of State, defines the word "*contras*" as follows:

> "Shortened form of the word 'contrarevolucionarios' (counterrevolutionaries), the term the Sandinista regime in Nicaragua uses for the guerrilla forces fighting against them. The Contras comprise former members of the Somozist National Guard, dissident right-wing former Sandinistas, and the Miskito Indian minority; each of these forces operates independently. *The Contras operate from bases in Honduras and Costa Rica and receive political and material support from the United States.* There have been recurrent armed clashes between Sandinista government troops and the rebels since March 1982." (Ann. 1, emphasis added, footnotes omitted.)

A footnote to the italicized sentence says:

> "The Reagan Administration has backed the Contras by various means, including joint maneuvers by the US with the Honduran Army, fleet exercises off the Nicaraguan coast, the secret mining of Nicaraguan harbors, and military supplies . . ."

15. In the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) Merits, Judgment, I.C.J. Reports 1986*, the Court found that the United States had trained, armed, equipped, financed and supplied the *contra* forces, and that these actions were in violation of customary international law. Just as the *contras* could not have carried out attacks in and against Nicaragua without being trained, armed, equipped, financed and supplied from the United States, they could not have carried out these attacks — and would not be able to carry them out today — without military encampments, training facilities, command centres, intelligence posts, and special airstrips and planes for transporting supplies to *contra* combatants — all located and maintained on Honduran territory. The unrestricted use of Honduran territory, particularly that part of it close to the frontier with Nicaragua, has been and remains vital to all military and paramilitary operations by the *contras*.

16. Senior Honduran officials have regularly made public statements acknowledging the widespread use of Honduran territory by the *contras* in conducting military and paramilitary operations against Nicaragua. Those statements include the following:

— On 17 April 1986, President Jose Azcona Hoyo openly acknowledged that *contra* forces operate from Honduras, stating that "They come and they go. I believe that near the border they have camps, temporary camps." President Azcona added that "Honduras will not devote resources to guard the backs of the Sandinistas". (*New York Times*, 18 April 1986 (Ann. 2).)

— In a radio interview broadcast on 10 December 1986, President Azcona again admitted not only that the *contras* use Honduran territory to attack Nicaragua, but also that the Honduran Government was making no effort to prevent such use of its territory. President Azcona stated that "the *contras* have been going in and out of Honduras and Nicaragua", and that "[t]hey have been assembled to oust a government". President Azcona also admitted that "one of our concerns" is that the *contras* might be defeated and thus trapped in Honduras. President Azcona acknowledged that he had expressed that concern to the United States. However, when asked whether Honduras was pressing the United States to order the *contras* to leave Honduras, President Azcona replied: "No. We are not exerting pressure." (Transcript of statements broadcast on Tegucigalpa Radio America 1854 GMT 10 December 1986 (translation) (Ann. 3, pp. 385-386, *infra*); UPI 11 December 1986 (Ann. 4).)

17. — In another interview broadcast in April 1987, President Azcona engaged in the following colloquy with a reporter:

> "[Reporter] Mr President, two National Congress deputies have said that you should go to Capire, on the Nicaraguan border, to see for yourself that *contras* are still there.
>
> [Azcona] . . . There possibly are some *contras* there, but I believe that that is given much . . . The Hondurans have been excessively preoccupied with that problem. We know that the problem exists; we did not create it and we all know its causes, which I have cited many times. We are making efforts to resolve it.
>
> [Reporter] Gradually?
>
> [Azcona] No, not all that gradually. *I believe that if there still are* contras *in Honduras, there are not thousands of them like in the past.*" (Tegucigalpa Voz de Honduras Network 0422 GMT 22 April 1987 (emphasis added) (translation) (Ann. 5).)

18. Other senior members of the Honduran Government have made similar admissions. For example, on 28 February 1986, Carlos Montoya, President of the Honduran Congress, told reporters that the *contras* attack Nicaragua from bases in Honduras, and stated that "Those rebels should be in Nicaraguan territory fighting the Sandinistas". (Reuters Ltd., 2 March 1986 (Ann. 6).)

19. Similarly, in a statement published in *Tiempo*, a Honduran newspaper, Foreign Minister Carlos López Contreras stated: "The Government of Honduras views the presence of the *contras* in the National territory as a defensive instrument."[1] (*Tiempo*, 24 November 1986 (Ann. 7).)

20. Honduran citizens affected by the *contras'* presence have publicly criticized the Honduran Government for permitting the *contras* to use Honduran territory and called upon it to expel them from the country. For example, in January 1987, Honduran coffee producers forced from their lands by *contra* forces sought the assistance of the Asociacion Hondurena de Productores de Cafe (AHPROCAFE), which in turn wrote a letter to various members of the United States Congress. The letter deplored the presence of the *contras* in

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[1] "El gobierno de Honduras observa la presencia de la contra en el territorio nacional como instrumento defensivo."

Honduras, stating that more than 600 families had been displaced on their account. (Letter from AHPROCAFE dated 12 January 1987 (Ann. 8).)

21. Former *contra* leaders have also stated publicly, in some cases in sworn testimony, that the *contra* forces operate from bases in Honduran territory, receive training in Honduras, and regularly use airstrips and intelligence facilities in that State. Edgar Chamorro, a member of the *contras'* political directorate between 1982 and 1984 whose testimony was cited on several points in the Court's opinion in *Military and Paramilitary Activities in and against Nicaragua, Merits, Judgment* (*I.C.J. Reports 1986*, pp. 46, 54, 59, 63, 67), explained how essential these Honduran facilities are to the *contras*:

> "The C.I.A., working with United States military personnel, operated various electronic interception stations in Honduras for the purpose of intercepting radio and telephonic communications among Nicaraguan Government military units. By means of these interception activities and by breaking the Nicaraguan Government codes, the C.I.A. was able to determine — and to advise us of — the precise location of all Nicaraguan Government military units . . . This type of intelligence was invaluable to us. Without it our forces would not have been able to operate with any degree of effectiveness inside Nicaragua. The United States Government also made it possible for us to resupply our troops inside Nicaragua, thus permitting them to remain longer inside the country. Under cover of military maneuvers in Honduras during 1983, United States armed forces personnel constructed airstrips, including the one at Aguacate, that, after the C.I.A. provided us with airplanes, were instrumental in resupplying our troops." (Supplemental Annex G to Applicant's Memorial, para. 18.)

22. It should not be understood that Honduras has freely given its territory for use by the *contras*. On the contrary, it has been paid handsomely. In 1981, when the *contra* forces first began to launch attacks against Nicaragua, United States aid to Honduras (military and economic) totalled $45,300,000. By 1985, that figure had increased more than six-fold, to $296,000,000. (Central American Historical Institute *Chronology*, October 1986.) (A chart reflecting United States aid to Honduras from 1977 to 1987 is attached hereto as Annex 9.) United States funds have flowed not only to the Honduran national treasury, but also to senior Honduran politicians and military officers, present and past. As General Walter Lopez Reyes, head of the Honduran armed forces from 1984-1986, stated at a news conference on 31 March:

> "[M]any politicians have been bribed by the CIA as part of an effort to control the general situation of the country to benefit the operations of the Nicaraguan counterinsurgents in Honduras." (*AP*, 1 April 1987 (Ann. 10).)

General Gustavo Alvarez Martinez, who left his position as head of the Honduran armed forces in March 1984, has publicly admitted that he received more than $50,000 from the United States Defense Department for "consulting work" over the last two years. (*Washington Post*, 10 May 1987 (Ann. 11).) Thus, it is not surprising that Honduras has come to be called "the Rented Republic", "Contra Country", and "the USS Honduras".

See Gregorio Selser, *Honduras, Republica Alquilada* (Mex-Sur S.A. 1983) ("the Rented Republic"); CBS "Sixty Minutes", 29 March 1987 ("Contra Country"); Interview with President Azcona, McNeil-Lehrer Report, 27 May 1986 ("USS Honduras").

23. Notwithstanding the above Honduras, in its Memorial to this Court, expresses astonishment that Nicaragua believes that there is an actual dispute between the two States. Honduras gives great prominence to a portion of a televised interview of Nicaragua's President Daniel Ortega Saavedra, in an effort to show that Nicaragua does "not have any problems with Honduras . . ." (Memorial, p. 11, *supra*). This is a distortion of the full statement by President Ortega, which is included in Annex 28 to the Memorial, and which sets forth quite clearly the "problems" Nicaragua has with Honduras — the very same "problems" that are identified in the Application:

> "*Question:* What is happening with Honduras? What is the attitude of Honduras? How do you define it?
>
> *Answer:* Well, Honduras is under a lot of pressure from the United States. It has been obliged to accept the presence of mercenary camps there; it has been obliged to accept American military bases, because it is under economic blackmail on the part of the United States.
>
> *Question:* When Israel saw that in Lebanon, it invaded Lebanon. Are you going to invade the border zone with Honduras?
>
> *Answer:* The thing is that we do not have any problems with Honduras. We have problems with the United States.
>
> We are fighting against the mercenary forces and we have been fighting with the mercenary forces in the border areas.
>
> *Question:* And you feel that you have the right to do so?
>
> *Answer:* Well, the thing is that this is not aggression against Honduras. That is, when the mercenary forces come from Honduras and invade our country, we defend ourselves and there is cross-fire and there is combat in the border zone and this is not an action directed against Honduras. To the contrary, I think that this helps the defence of the sovereignty of Honduras . . ."

24. Ignoring completely its own complicity with the United States in the very same military and paramilitary activities in and against Nicaragua that this Court has already adjudged illegal, the Honduras Memorial places the entire blame for the present dispute between Nicaragua and Honduras — and, indeed, for all of the disputes currently afflicting Central America — on Nicaragua. Honduras accuses Nicaragua of supplying arms to rebels in El Salvador, and of trespassing on Honduran territory in so doing. This is the same charge that the United States made in the *Military and Paramilitary Activities in and against Nicaragua* case, and which the Court found unsubstantiated:

> "[T]he evidence is insufficient to satisfy the Court that, since the early months of 1981, assistance has continued to reach the Salvadorean armed opposition from the territory of Nicaragua on any significant scale, or that the Government of Nicaragua was responsible for any flow of arms at either period." (*I.C.J. Reports 1986*, p. 86, para. 160.)

25. Undeterred by this finding, the Honduras Memorial attributes the very opposite conclusion to the Court:

> "[S]ince the government of the Sandinista Front came to power in Nicaragua, the general conflict in the region has increased considerably as a result of the behaviour of Nicaragua itself towards other Central

> American States, as is shown by the aid afforded by the government of the Sandinista Front to the armed opposition in El Salvador immediately after the fall of the government of President Somoza, which can be seen in the passage cited above from the judgment of the Court of 27 June 1986." (P. 16, *supra*.)

26. The passage in question attributes no responsibility whatsoever to the Nicaraguan Government for aiding the Salvadoran armed opposition; it says merely that:

> "between July 1979, the date of the fall of the Somoza régime in Nicaragua, and the early months of 1981, an intermittent flow of arms was routed via the territory of Nicaragua to the armed opposition in El Salvador" (*I.C.J. Reports 1986*, p. 86, para. 160).

Later in the opinion, as shown above, the Court stated that the evidence did *not* substantiate that the Government of Nicaragua was responsible for any flow of arms, either during this period or thereafter.

27. Apart from mischaracterizing the Court's finding on this issue, only two instances of alleged arms trafficking by Nicaragua are cited by Honduras. Both incidents were fully described in documents taken into consideration by the Court in the *Military and Paramilitary Activities in and against Nicaragua*. (See, *ibid.*, p. 44 (referring to "*Revolution beyond our Borders, Sandinista Intervention in Central America*" (United States Department of State, September 1985)).) These incidents are:

(1) On 17 January 1981, a quantity of weapons and supplies that "had been well camouflaged inside a van" that allegedly entered Honduras from Nicaragua was discovered when the van was detained at Comayagua, in the middle of Honduras. Five Hondurans and twelve Salvadorans — and no Nicaraguans — were arrested for their involvement in this shipment of weapons and supplies. There is no evidence whatsoever that the Nicaraguan Government was responsible for, approved or knew anything about this shipment.

(2) On 7 April 1985, a van carrying ammunition (allegedly for rebels fighting against the Government of Guatemala) was intercepted at Choluteca, Honduras. The ammunition "had been packed in polyethylene bags and hidden in the sides of the van". According to Honduras, the van entered that country from Nicaragua. Again, there is no evidence whatsoever that the Government of Nicaragua was responsible for, approved or knew anything about this shipment. Indeed, there is no evidence that either this shipment or the one intercepted on 17 January 1981 originated in Nicaragua.

28. While Nicaragua has no knowledge about either of the two incidents described in the Honduras Memorial, it has never denied the possibility that, contrary to the Government's policy and efforts, some private individuals sympathetic to the Salvadoran rebels from time to time may have smuggled small quantities of arms or ammunition to El Salvador through or from Nicaraguan territory. In the *Military and Paramilitary Activities in and against Nicaragua*, Nicaragua submitted an affidavit by its Foreign Minister, Father Miguel d'Escoto Brockmann (cited by Honduras at page 18, *supra*, of its Memorial), pointing out the difficulties Nicaragua faces in patrolling its long border with Honduras and preventing arms trafficking across the border by private individuals. However, Nicaragua has steadfastly denied, and continues to deny, that it has ever undertaken, approved or acquiesced in

any shipments of arms or other war *matériel* to rebels fighting against another Central American Government.

29. Honduras suggests that if Nicaragua cannot be expected to seal off its border completely from arms trafficking, then no more can be expected of it. (Memorial, p. 18, *supra*.) Perhaps this would be relevant if Nicaragua claimed only that from time to time small quantities of arms were smuggled clandestinely into Nicaragua from Honduras. Honduras cannot seriously contend, however, that it has been unable to detect the open presence of up to 10,000 armed *contras* on its territory, and the frequent cross-border movements (into and back out of Nicaragua) of large concentrations of *contra* combatants fully equipped for battle. Nor can Honduras seriously assert that it is unable to locate the *contras'* military bases, command centres, training facilities, intelligence posts or airstrips. Nicaragua itself has repeatedly informed Honduras of the precise locations of these facilities, and their whereabouts are a matter of public knowledge, having been identified on numerous occasions by the international news media.

30. The Honduras Memorial accuses Nicaragua of trafficking not only in arms but in guerrillas as well. "Since July 1979 the Honduran territory has also been used by the government of the Sandinista Front for the passage of insurgents to El Salvador." (P. 19, *supra*.) Only one incident is described, when a group of guerrillas (their nationality is not provided) was allegedly captured "on their way to El Salvador" *(ibid.)* by a Honduran military patrol at Las Cuevitas on 27 March 1983. There is no allegation, let alone evidence, that the guerrillas originated from, or ever set foot in, Nicaragua. Nor is there evidence of Nicaragua's responsibility for, approval or knowledge of this guerrilla group. Nicaragua denies any such responsibility, approval or knowledge.

31. The Honduras Memorial makes a tortured attempt to link Nicaragua to a variety of terrorist actions inside Honduras and against Honduran missions abroad. *(Ibid.)* While reciting that these incidents have been provoked by "[t]he internal armed conflict in El Salvador, which has been intensifying since 1978", Honduras also blames the incidents on "the support given to the guerrillas in that State by the government of the Sandinista Front since July 1979" *(ibid.)*. There is no attempt to specify the kind of "support" given by Nicaragua or how that "support" contributed to the terrorist actions described, other than an assertion that "persons connected with . . . the dominant movement in Nicaragua participated directly or indirectly in these incidents" *(ibid.)*. No such persons are named, either in the Memorial or in Annex 12 thereto (cited as the source of these accusations) , nor is there any indication of how he, she or they participated in the incidents complained of. The incidents themselves have no apparent connection with Nicaragua. Rather, they appear to have been undertaken in a misguided effort to advance the causes of rebels fighting against the Governments in El Salvador, Guatemala and Honduras itself. Indeed, according to Honduras's own Annex 12, rebel groups in all three countries have claimed responsibility, variously, for these actions. It is obvious that there is no basis whatsoever for linking Nicaragua or any of its citizens to these acts.

32. The Honduras Memorial accuses Nicaragua's armed forces of attacks

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Annex 12, it should be noted, is a speech given by the Permanent Representative of Honduras to the Permanent Council of the OAS on 14 July 1983. It consists of a series of accusations against Nicaragua without identifying sources or other evidentiary support. Thus, the only evidence offered in support of the accusations in the Honduras Memorial is a prior iteration of the same accusations, itself devoid of evidentiary support.

on Honduran frontier and customs posts, helicopters and boats; the mining of fields and roads along the frontier; and incursions into Honduran territory. While Nicaragua denies these charges in general, it acknowledges that since the *contras* began using Honduras as an operational base for launching attacks in and against Nicaragua, there have been occasional armed encounters between Nicaraguan and Honduran forces along the border, and that casualties in men and *materiel* have been suffered by both sides. Nicaragua consistently has done everything within its power to avoid such encounters. Nevertheless, they have occurred for two reasons. First, Honduras permits the *contras* to use its territory to carry out attacks in and against Nicaragua. Second, as set forth in the Application and as Nicaragua is prepared to prove at the merits phase of this proceeding, the Honduran armed forces have actively participated with the *contras* in many of their attacks inside Nicaragua, and provided them with artillery or air support for their operations. Thus, it is the illegal presence of the *contras* in Honduras — which is possible only because Honduras permits the *contras* to remain in its territory and to attack Nicaragua therefrom — that is responsible for the armed encounters that have occurred between the two States and for the tragic losses of life and property that both have suffered.

33. Honduras not only blames Nicaragua for causing the present dispute between the two States, but also for blocking all efforts to achieve a diplomatic solution. These accusations are equally fallacious. As to efforts to achieve a diplomatic solution, Nicaragua has vigorously and in good faith pursued both a bilateral negotiated settlement of its dispute with Honduras and a multilateral negotiated settlement of the dispute affecting all of Central America. A bilateral settlement consistently has been rejected by Honduras, which insists that any negotiated settlement must be regional, and therefore multilateral, in nature. Yet, a regional settlement has also been frustrated by Honduras, because any regional agreement would necessarily recognize the sovereignty of Nicaragua and require, consistent with international law, that all assistance to the *contras* be terminated.

34. Since 1981 Nicaragua has sought a bilateral settlement directly with Honduras. On 13 May 1981, the heads of State of the two countries met at the border post of El Guasaule. The Honduran President, General Policarpo Paz Garcia, committed his Government to stop the attacks in and against Nicaragua by the *contras* and by elements of the Honduran army. (Ann. 12.) Despite this commitment, the attacks not only continued but intensified. On 21 April 1982, Nicaragua's Foreign Minister, Father Miguel d'Escoto Brockmann, presented his Honduran counterpart, Edgardo Paz Barnica, a 7-point plan for resolving the dispute between the two countries. It called for the signing of a non-aggression pact between Nicaragua and Honduras; the establishment of a system of joint patrol of the common border to prevent activities by armed groups that could endanger relations between the two countries; and for dismantling the *contra* military encampments in Honduran territory. The Honduran Foreign Minister responded in a note dated 23 April 1982 (Ann. 4 to the Honduras Memorial), rejecting a bilateral settlement of the dispute:

> "I understand, as was very clearly explained by Your Excellency, that your proposal is of a bilateral nature and is aimed at improving relations between our two countries, while the Honduran initiative is wider in scope, of a regional nature and with perhaps more ambitious objectives. Despite this, my Government considers that the regional approach should prevail since a major part of the problems confronted by

> the Central American countries go beyond the possibility of a bilateral solution." (Ann. 4 to Honduras Memorial, p. 87, *supra*.)

Honduras has maintained this position ever since, refusing to agree to any bilateral settlement of its dispute with Nicaragua.

35. Between April 1982 and June 1983, a number of meetings took place between high-level officials of Nicaragua and Honduras, including: a meeting of the Ministers of Defence and Chiefs of Staff on 20 May 1982; a meeting of the Chiefs of Navai Forces in July 1982; and various meetings of the Foreign Ministers and Vice Ministers. No agreements resulted, however. Honduras continued to assert that the dispute between the two countries could only be settled as part of an overall regional settlement agreed to by all of the Central American States. During this period and thereafter Nicaragua continued to make specific proposals for a bilateral settlement between Nicaragua and Honduras, as well as proposals for an overall regional settlement, which it saw as complementary to, and not inconsistent with, a bilateral settlement. (Ann. 13.) Honduras rejected every Nicaraguan overture. Since August 1982, Honduras has refused even to meet with Nicaragua outside of the context of a regional meeting involving all of the Central American States.

36. The Honduras Memorial accuses Nicaragua of blocking a regional settlement in Central America. Chapter I, Section 6, is entitled: "Nicaraguan Responsibilities for Blocking the Contadora Process." The section presents a version of events that has little in common with what has actually transpired. An accurate history of the Contadora process, dating from Nicaragua's agreement to participate (on 19 July 1983) through Nicaragua's agreement to sign the "final version" of the Contadora Treaty (on 17 June 1986), demonstrates that no Government co-operated more fully with Contadora than Nicaragua, and no Government did more to obstruct a final agreement than Honduras.

37. The first formal proposal made by the Contadora Group (Colombia, Mexico, Panama and Venezuela) was the Document of Objectives, presented for agreement by the five Central American States on 7 September 1983. It laid down broad guidelines on the objectives of the process, with regard to reaching agreement on enumerated substantive points and the steps to be followed along the way. Nicaragua agreed to the Document of Objectives, as did the other Central American States.

38. The Contadora Group then asked that each of the Central American States prepare concrete proposals for an agreement incorporating the principles set forth in the Document of Objectives. The Central American States were given until 1 December 1983 to present their proposals. Nicaragua was the only State to comply with this request. On 15 October 1983, Nicaragua presented a package of five proposed treaties, collectively called Legal Bases for Guaranteeing Peace and the International Security of the Central American States. (Ann. IX to Applicant's Request for Interim Measures in case concerning *Military and Paramilitary Activities in and against Nicaragua*.) In

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The Honduran Foreign Minister also rejected, in specific terms, Nicaragua's proposal for a non-aggression pact on the ground that such an agreement was "not necessary" and because of "other difficulties of a technical and practical nature" (p. 88, *supra*). The Honduran Foreign Minister rejected Nicaragua's proposal for dismantling the *contra* military encampments on the ground that "there are no camps of Somoza Revolutionaries in Honduras" (p. 89, *supra*). He went on to state that: "The truth of this assertion is proved by our willingness to accept a system of international monitoring and supervision on our territory." (*Ibid.*) As of the date of this Counter-Memorial, Honduras has refused to accept any such system.

addition to a regional treaty to be signed by all five Central American States, Nicaragua presented two bilateral treaties of friendship and co-operation (one between Nicaragua and Honduras, and one between Nicaragua and the United States) and one treaty guaranteeing non intervention in the internal conflict in El Salvador[1].

39. After months of negotiations, on 7 September 1984, the Contadora Group presented to the five Central American States a proposed treaty that it called its revised or "final version" of the "Contadora Treaty for Peace and Co-operation in Central America". In the covering letter to the five States, the Contadora members stated:

> "This latest version is the result of an intense process of consultations and a broad exchange of views with all the Central American governments . . .
>
> . . . .
>
> The signing of the Contadora Act on Peace and Co-operation in Central America should provide the basis for security and coexistence governed by mutual respect . . .
>
> . . . .
>
> In the light of the persistent threat to peace, we believe that the Governments of the region must expedite the process of assuming the legal commitments contained in the Contadora Act.
>
> . . . .
>
> We are confident that in the not too distant future, we the Ministers for Foreign Affairs of the Contadora Group and our colleagues in the Central American region, once the improvements considered relevant are made, will be able to sign the Contadora Act on Peace and Co-operation in Central America." (Communication from the Ministers for Foreign Affairs of the Contadora Group addressed to the five Central American heads of State (Ann. 14).)[2]

40. In the weeks following the presentation of the Contadora Treaty, high officials of each of the Central American States made positive public state-

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[1] The proposed non-intervention treaty concerning El Salvador was neither "devious" nor "interventionist", as claimed in the Honduras Memorial (p. 31, *supra*). On the contrary, it would have guaranteed strict non-intervention in the internal affairs of El Salvador by prohibiting the contracting parties from supporting arms or other assistance to the parties to the internal conflict in that country.

[2] "Esta *última versión* es el resultado de un intenso proceso de consultas y de un amplio intercambio de puntos de vista con todos los gobiernos centro-americanos . . .

. . . .

La suscripción del Acta de Contadora para la Paz y Cooperación en Centroamérica debe conducir al establecimiento de una base de seguridad y convivencia mutuamente respetuosa . . .

. . . .

Ante la persistente amenaza de la ruptura de la paz es necesario, a nuestro juicio, *que los gobiernos de la región apresuren la adopción de los compromisos jurídicos contenidos en el Acta de Contadora.*

. . . .

Abrigamos la confianza de que en un futuro inmediato los Cancilleres del Grupo de Contadora y sus colegas de la región centroamericana, una vez hechas las *afinaciones* que se estimen pertinentes, podemos suscribir el Acta de Contadora para la Paz y la Cooperación en Centroamérica."

ments about it and there was great optimism that the Treaty would be signed. Then, on 22 September 1984, Nicaragua formally communicated its acceptance of the Treaty "without reservation" (Ann. 15). All of a sudden, the positive attitude of the other Central American States changed. As described by Oyden Ortega, the Foreign Minister of Panama and representative of his Government in the Contadora process:

> "We believed that at that moment that the days of peace and understanding were shining among the Central Americans. The situation began to change when the Nicaraguan Government formally manifested to the Presidents of the Governments that made up the Contadora Group that Nicaragua supported the revised Contadora Act without reservation and was prepared to sign it. In spite of the fact that the reaction of the Nicaraguan Government came after there had likewise been positive declarations from the other four Central American Governments, there arose an atmosphere of caution toward the revised Act on the part of those four Governments."[1]

41. Honduras reacted to Nicaragua's acceptance of the Contadora Treaty by calling for a meeting of the five Central American foreign ministers in Tegucigalpa, to discuss changes in the Treaty. The members of the Contadora Group itself were not invited. Nicaragua refused to participate, stating that the meeting was contrary to the Contadora process. Guatemala sent only a vice minister. The meeting resulted in a proposed treaty substantially different from the one presented by Contadora. On 20 October 1984, the Document of Tegucigalpa was provisionally agreed to by Honduras, El Salvador and Costa Rica, but not Guatemala. Thereafter the former three States were called the Tegucigalpa Group. The Contadora Group was displeased by the rump session and the draft treaty it produced. According to former Panamanian Foreign Minister Oyden Ortega:

> "We were very much struck by the fact that the Honduran Government would convene a meeting in Honduras of other Central American Governments, excluding the four Contadora foreign ministers, for the purpose of carrying out a joint review of the Act and suggesting the modifications that they considered appropriate.
>
> This new element indicated the beginning of a new moment of difficulty or crisis within the Contadora process, since the convening of the meeting broke an unwritten rule of the Contadora Group and of the joint meetings with the Central American foreign ministers.
>
> We were expecting small adjustments to refine the revised Act, but in many cases substantial modifications to the draft Act were presented.
>
> In fact, the observations presented by Honduras, El Salvador, Costa Rica and the United States implied — if applied literally — reopening the negotiation of matters of substance.
>
> The Government of Honduras proposed, as part of its exceptions to

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[1] "Creíamos que en ese momento fulguraban los días de paz y entendimiento entre los centroamericanos. *La situación empezó a cambiar cuando el gobierno nicaraguense manifestó formalmente a los Presidentes de los gobiernos que integran el Grupo de Contadora, que Nicaragua apoyaba sin reservas el Acta Revisada de Contadora y estaba dispuesta a firmarla.* A pesar de que la reacción del Gobierno nicaraguense se dio cuando ya se habían producido las manifestaciones también positivas de los otros cuatro gobiernos centroamericanos, *se crea un ambiente de reserva al Acta Revisada* por parte de los otros cuatro gobiernos centroamericanos."

> the Act, the creation of a disarmament committee. This would be unacceptable, above all, if it was meant to be established within the framework of the Inter-American Defense Board.
>
> The ex-President of Venezuela, Carlos Andrés Peréz, at that time described the Document of Tegucigalpa as 'the anti-Contadora Act'."

42. On 6 November 1984, the *Washington Post* revealed that the Government of the United States had intervened in the Contadora process to block acceptance of the revised Contadora Treaty by Honduras, Costa Rica and El Salvador. The *Washington Post* cited as its source a secret background paper for a meeting of the National Security Council, dated 30 October 1984. The paper, entitled "Background Paper for NSC Meeting on Central America", states:

> "We have effectively blocked Contadora Group efforts to impose the second draft of a Revised Contadora Act. Following intensive US consultations with El Salvador, Honduras and Costa Rica, the Central American submitted a counterdraft *(sic)* to the Contadora States on October 20, 1984. It reflects many of our concerns and shifts the focus within Contadora to a document broadly consistent with US interests." (Ann. 16, p. 404, *infra*.)

Commenting on the revelation of United States efforts to block acceptance of the Contadora Treaty, former Panamanian Foreign Minister Ortega writes: "An action was revealed whose consequences and form departed from the methods and objectives of the Contadora Group."

43. At the urging of the members of the Contadora Group, and to break the impasse created by Honduras and the other members of the Tegucigalpa Group, Nicaragua agreed to negotiate changes in the "final version" of the Contadora Treaty that it had already accepted without reservation. The negotiations lasted through most of 1985, resulting in a new draft of the Contadora Treaty presented by the members of the Contadora Group on 7 October 1985. The five Central American States were given 45 days, or until 21 November 1985, to respond. Nicaragua responded on 11 November 1985 agreeing to most of the Treaty, but expressing specific concerns about certain pro-

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"Nos llamó poderosamente la atención que el gobierno de Honduras citara a los otros gobiernos centroamericanos, con la exclusión de los cuatro Cancilleres de Contadora, a una reunión en ese país, con el propósito de efectuar una revisión conjunta del Acta y sugerir las modificaciones que estimaran convenientes.

Este nuevo elemento *indicaba el inicio de un nuevo momento difícil o de crisis dentro del proceso de Contadora, ya que la sola convocatoria rompía con una regla no escrita del Grupo de Contadora y de las reuniones conjuntas con los Cancilleres centroamericanos.*

Esperábamos pequeños ajustes para afinar el Acta revisada, y se presentaron en muchos casos modificaciones sustanciales al Proyecto de Acta.

De hecho, las observaciones presentadas por Honduras, El Salvador, Costa Rica y Estados Unidos *implicaban* — de ser aplicadas al pie de la lettre — *reabrir la negociación de aspectos sustantivos.*

El gobierno de Honduras planteó, como parte de las objectiones al Acta, la creación de un Comité *ad hoc* de desarme, lo cual resultaba inaceptable, sobre todo, si se pretendía hacerlo en el marco de la Junta Interamericana de Defensa.

El ex presidente de Venezuela Carlos Andrés Peréz, calificó en ese momento el Documento de Tegucigalpa como *'el anti-Acta de Contadora'*."

"Quedaba al descubierto una acción cuyas consecuencias y forma *se apartaban de los métodos y objetivos del Grupo de Contadora.*"

visions. Nicaragua indicated its willingness to continue negotiating about these provisions, however. (See Ann. 11 to Honduras Memorial.) None of the other Central American States accepted the Treaty but negotiations continued.

44. On 7 June 1986, after further negotiations, the Contadora Group presented to the five Central American States the definitive and final version of the Contadora Treaty. In their official cover letter of 6 June 1986, the Foreign Ministers of the Contadora States said:

> "The Foreign Ministers of Colombia, Mexico, Panama and Venezuela will meet on the 6th of June, a date jointly agreed upon to conclude officially the negotiations on the Contadora Act for Peace and Cooperation in Central America and to proceed to its formalization . . .
>
> Today, we make a formal delivery of what, in the judgment of Contadora, should constitute the final version of the Contadora Act for peace and cooperation in Central America."[1]

45. Nicaragua promptly agreed to sign the Contadora Treaty. In a formal response to the Contadora Group of 17 June 1986, the Government declared:

> "Nicaragua, which always has been ready to sign the Act of Peace in the spirit of the Caraballeda message, considers that the Act of June 7, 1986, presented formally to the Central American countries by the Contadora Group, constitutes the only instrument that 'can and should bring about a rapid and effective conclusion to the negotiating process' to achieve peace in Central America."[2]

46. Honduras on the other hand, rejected the Contadora Treaty. In a communiqué of 13 June 1986, the Honduran Government stated:

> "The last proposed draft of the Act by Contadora does not constitute, in the opinion of the Government of Honduras, a document that establishes reasonable and sufficient obligations to guarantee its security."[3] (Ann. 19.)

In the official response to the Contadora Group, the Honduran Foreign Minister, Carlos López Contreras, wrote:

> "As I have already expressed verbally during our joint meeting in Panama, the Government of Honduras takes note of what was stated by the Contadora Group in the sense that the final draft of the Act com-

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[1] "Los Cancilleres de Colombia, México, Panamá y Venezuela nos reunimos el 6 de junio, fecha comunmente acordada para dar por concluida oficialmente la negociación del Acta de Contadora para la paz y la Cooperación en Centroamérica y para proceder a su formalización . . .

Hoy hacemos entrega formal de lo que a juicio del Grupo de Contadora debe constituir la *ultima versión* del acta de Contadora para la paz y la cooperación en Centroamérica." (Emphasis added.) (Ann. 17.)

[2] "*Nicaragua, que siempre ha estado dispuesta a firmar el Acta de Paz* en el espíritu del mensaje de Caraballeda, considera que el Acta del 7 de junio de 1986, presentada formalmente a los países centroamericanos por el Grupo de Contadora, *constituye el único instrumento que 'puede y debe propiciar una conclusión rápida y eficaz del proceso negociador', para alcanzar la paz en Centroamérica.*" (Ann. 18.)

[3] Original Spanish text:

"El ultimo proyecto de Acta propuesto por Contadora no constituye, en la opinión del Gobierno de Honduras, un documento que establezca obligaciones razonables y suficientes para garantizar su seguridad."

> pletes its mediation effort on the substantive aspects of the Act, and that the Contadora Group nevertheless remains available to assist in the negotiation of the operational and practical aspects of the same." (Ann. 20.)

47. Since the Honderan Foreign Minister's objection to the Contadora Treaty, there have been daily attacks in and against Nicaragua by *contras* operating from bases in Honduras. The airstrip at Aguacate, like other airstrips inside Honduras, has been used on a daily basis to airdrop sapplies to *contra* units inside Nicaragua. (Ann. 21[2].) Hundreds of *contras* have been trained in military tactics, sabotage, demolition, etc., at special training facilities inside Honduras, such as the one at Capire. *Contra* military activity emanating from Honduras and directed against Nicaragua has been higher over the past 12 months than at any previous time. Death and destruction inside Nicaragua are higher than at any previous time.

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[1] "Como ya lo expresé verbalmente durante nuestra reunión conjunta en Panama, el Gobierno de Honduras toma nota de lo expresado por el grupo de Contadora en el sentido de que el último proyecto de Acta agota *su gestion mediadora* en los aspectos sustantivos del Acta y que permanecera, sin embargo, disponible para colaborar en la negociación de los aspectos operativos y practicos de la misma."

[2] Annex 21 is the flight log obtained from the wreckage of a C-123 cargo plane that was shot down over Nicaragua on 5 October 1986. The sole surviving crew member, Mr. Eugene Hasenfus, a citizen of the United States, was captured by Nicaraguan armed forces. Mr. Hasenfus subsequently stated that the downed plane was on a mission to drop arms and other war *materiel* to *contra* forces inside Nicaragua. He stated that he had participated in numerous such missions and that he believed he was working for the Government of the United States. Mr. Hasenfus confirmed, as recorded in the flight logs, that the downed C-123 had made numerous trips into and out of the *contras'* airbase at Aguacate, Honduras, for the purpose of loading up and delivering supplies to *contra* forces inside Nicaragua. For the convenience of the Court the designator in the logs refers to the airbase at Aguacate.

PART I. JURISDICTION UNDER ARTICLE 36 (2) OF THE STATUTE OF THE COURT

48. The Application of Nicaragua asserts as a ground of the jurisdiction of the Court the declarations of the Parties made under Article 36 (2) of the Statute of the Court. Nicaragua's declaration was made on 24 September 1929, without reservation. It is currently in effect. (*Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 417.) Honduras accepted the jurisdiction of the Court in a series of declarations of which the most recent was filed on 20 February 1960, and recited that it was "for an indefinite term, starting from the date on which it is deposited with the Secretary-General of the United Nations". These two intersecting declarations confer jurisdiction on the Court in this case under the optional clause.

49. However, on 22 May 1986, Honduras purported to make a new declaration. Paragraph 1 recites the language of Article 36 (2) of the Statute. Paragraph 2 states:

> "This declaration shall not apply, however, to the following disputes to which the Republic of Honduras may be a party:
>
> *(a)* Disputes in respect of which the parties have agreed or may agree to resort to other means for the pacific settlement of disputes;
>
> *(c)* Disputes relating to facts or situations originating in armed conflicts or acts of a similar nature which may affect the territory of the Republic of Honduras and in which it may find itself involved directly or indirectly;
>
> . . . (Memorial, Ann. 43.)

Paragraph 3 of the "new declaration" states that Honduras "reserves the right at any time to supplement, modify or withdraw this declaration or the reservations contained therein . . .". And paragraph 4 asserts that "This Declaration replaces the Declaration made by the Government of Honduras on 20 February 1960."

50. Honduras contends that this "reservation" has the effect of ruling out jurisdiction of the present case. In this Part of the Memorial, Nicaragua will show that the reservation is not effective against it.

Paragraph 4 does not affect the analysis in this case. Whether a State bound by a prior declaration can modify the effect of the declaration is not affected by whether the new effort is denominated a "modification" or a "new declaration". See *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 417. The same rules apply in the case of total or partial denunciation of a declaration. *Right of Passage over Indian Territory, Preliminary Objections, I.C.J. Reports 1957*, p. 142.

CHAPTER I

THE COURT HAS JURISDICTION UNDER ARTICLE 36 (2) OF ITS STATUTE, AND THE HONDURAN DECLARATION OF 22 MAY 1986 IS NOT EFFECTIVE

51. Nicaragua contends, first, that Honduras cannot modify or partially denounce its declaration of 20 February 1960, and in any case such an attempted modification cannot be effective against Nicaragua in the circumstances of this case.

A. Having Been Made with No Stipulations as to Duration, the "New Declaration" by Honduras Could Not Be Withdrawn or Modified

52. The "new declaration" made by Honduras on 20 February 1960 accepting the compulsory jurisdiction of the Court read as follows:

> "The Government of the Republic of Honduras, duly authorized by the National Congress, under Decree No. 99 of 29th January 1960, to renew the Declaration referred to in Article 36 (2) of the Statute of the International Court of Justice, hereby declares:
>
> 1. That it renews the Declaration made by it for a period of six years on 19th April 1954 and deposited with the Secretary-General of the United Nations on 24th May 1954, the term of which will expire on 24th May 1960, recognizing as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes concerning:
>
> *(a)* the interpretation of a treaty;
> *(b)* any question of international law;
> *(c)* the existence of any fact which, if established, would constitute a breach of an international obligation;
> *(d)* the nature and extent of the reparation to be made for the breach of an international obligation.
>
> 2. This new Declaration is made on condition of reciprocity, *for an indefinite term*, starting from the date on which it is deposited with the Secretary-General of the United Nations" (emphasis by the Government of Nicaragua).

53. This text differs from the two earlier declarations by Honduras, dated 2 February 1948 and 19 April 1954, both of which were for six years — the first giving no other details, whereas the second provided for the possibility of tacit renewal.

54. The question then is to determine whether a State bound by a Declaration of Acceptance of the compulsory jurisdiction of the Court that it has made "for an indefinite term" can modify or denounce that declaration. The reply can only be negative. Any other approach would be incompatible with the Optional Clause system.

55. The predominant conception of the legal nature of the link between States that accept the compulsory jurisdiction of the Court is stated by Charles de Visscher as follows:

> "The system of an Optional Clause may be analysed as a complex of bilateral conventions deriving from unilateral declarations which converge, giving rise to a consensual link between the declarant States with effect from the day their successive declarations are lodged." (Charles De Visscher, *Problèmes d'interprétation judiciaire en droit international public*, Pedone, Paris, 1963, p. 199.)[1]

56. The opinion of the best-qualified authors is the same. (See, in particular, Paul Guggenheim, *Traité de droit international public*, Librairie de l'Université, Geneva, 1954, Vol. II, p. 120; Sir Humphrey Waldock, "Decline of the Optional Clause", *BYBIL*, 1955-1956, p. 254; Sir Gerald Fitzmaurice, "The Law and Procedure of the I.C.J.", *BYBIL*, 1957, pp. 230-232, and *BYBIL*, 1958, p. 75; Sir Hersch Lauterpacht, *The Development of International Law by the International Court*, Stevens, London, 1958, pp. 345-346; Eric Suy, *Les actes juridiques unilatéraux en droit international public*, Librairie générale de droit et de jurisprudence, Paris, 1962, pp. 142-147; Eduardo Jiménez de Aréchaga, "International Law in the Last Third of a Century", *RCADI*, 1978-I, Vol. 159, p. 154.)

57. This analysis is fully confirmed by the jurisprudence of the Court which:

> "considers that, by the deposit of its Declaration of Acceptance with the Secretary-General, the accepting State becomes a Party to the system of the Optional Clause in relation to the other declarant States, with all the rights and obligations deriving from Article 36. The *contractual relation* between the Parties and the compulsory jurisdiction of the Court resulting therefrom are established, '*ipso facto* and without special agreement', by the fact of the making of the Declaration." (*Right of Passage over Indian Territory, Preliminary Objections, I.C.J. Reports 1957*, p. 146 (emphasis added).)

58. The Court reiterated this position in its decision of 26 November 1984:

> "In fact, the declarations, even though they are unilateral acts, establish a *series of bilateral engagements* with other States accepting the same obligation of compulsory jurisdiction, in which the conditions, reservations and time-limit clauses are taken into consideration." (*Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 418 (emphasis added); see also p. 420.)

59. It follows necessarily that a State which has made a declaration under Article 36, paragraph 2, of the Statute is bound by it and cannot disengage unilaterally from the obligations entailed. To permit it to do so would be contrary to the contractual nature of the resulting relations and to the principle of good faith.

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[1] "Le système de la clause facultative s'analyse en un complexe de conventions bilatérales issues de déclarations unilatérales qui se rencontrent, cette rencontre ayant pour effet de faire naître successivement un lien consensuel entre les Etats déclarants à compter du jour du dépôt de leurs déclarations successives."

60. As the Court has stressed:

> "In the establishment of this network of engagements, which constitutes the Optional-Clause system, the principle of good faith plays an important role." (*Ibid.*, p. 418.)

61. It follows that the law of treaties or, in any event, the general principles thereof applies to the legal problems relating to the application of declarations of acceptance of the Optional Clause, as the vast majority of authors emphasize:

> "Undoubtedly, the declarations under Article 36 (2) of the Statute, made as they are at different times and by different States are not in all respects exactly like a treaty. But they are essentially a treaty." (Sir Hersch Lauterpacht, *The Development of International Law by the International Court*, Stevens, London, 1958, p. 345.)

(See also E. Hambro, "Some Observations on the Compulsory Jurisdiction of the International Court of Justice", *BYBIL*, 1948, pp. 142 *et seq.* or Sir Humphrey Waldock, *op. cit.*, p. 264; *Anglo-Iranian Oil Co., Preliminary Objection, I.C.J. Reports 1952*, p. 142 (dissenting opinion of Judge Read).)

62. The general principles of the law of treaties are, in particular, applicable to the termination of obligations deriving from optional declarations:

> "The legitimacy of terminating any declaration otherwise than in accordance with its terms must, on principle, hinge upon the rules governing the termination of treaties." (Sir Humphrey Waldock, *op. cit.*, p. 265.)

> "In general, unilateral termination of the obligations of the Optional Clause must be regarded as subject to conditions governing the termination of treaties." (L. Oppenheim, ed. by H. Lauterpacht, *International Law*, Longmans, London, 7th ed., 1951, p. 61.)

63. The applicable principles are set out in Article 56 (1) of the Vienna Convention on the Law of Treaties, relating to the "Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal":

> "1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
>
> *(a)* it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
> *(b)* a right of denunciation or withdrawal may be implied by the nature of the treaty."

64. These provisions were adopted at the twenty-fourth plenary session of the United Nations Conference on the Law of Treaties, on 13 May 1969, by 95 votes for, none against and 6 abstentions. They are widely recognized as a codification of the rules of general international law. The Legal Service of the United Nations noted in a letter of 22 July 1971 to the Senegalese authorities:

> "[I]t is established that both the International Law Commission and the Vienna Conference have considered Article 56, at least as to its general principle, as recognizing the existing law linking States with one another, whether or not they are parties to the Convention." (Cited by Daniel Bardonnet, "La dénonciation par le Gouvernement sénégalais de la convention sur la mer territoriale et la zone contiguë et de la con-

> vention sur la pêche et la conservation des ressources biologiques de la haute mer, en date à Genève du 29 avril 1958", *AFDI*, 1972, p. 143.)[1]

65. Similarly, Judge Sette-Camara noted in his separate opinion to the Advisory Opinion of the Court, dated 20 December 1980,

> "Article 56 [of the 1969 Vienna Convention] embodies rules of general international law within the meaning of Article 3 *(b)* [of this Convention]." (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, I.C.J. Reports 1980*, p. 186.)

66. And the Court itself has taken the view that Article 56 provides at least general indications of the pertinent rules. (*Ibid.*, pp. 94-95.)

67. The starting point of any reasoning is therefore that a treaty containing no provisions limiting its duration is not subject to unilateral denunciation. This emerges from the actual wording of the above-quoted Article 56, paragraph 1 — "A treaty . . . *is not* subject to denunciation or withdrawal *unless*: . . ." — and from the circumstances of its adoption. The first draft, drawn up in 1963 by the special ILC rapporteur, Sir Humphrey Waldock, was in fact worded more ambiguously. (See *ILC Yearbook*, 1963, Vol. II, p. 64.) In this form it met with almost unanimous opposition from the members of the International Law Commission (*ibid.*, Vol. I, pp. 100-107), and was extensively amended so as to reaffirm the basic principle (*ibid.*, pp. 239-241; also see *ibid.*, Vol. II, pp. 200-202). Indeed the principle was further strengthened as a result of government comments (*ILC Yearbook*, 1966, Vol. II, pp. 28 *et seq.*).

68. Neither of the two exceptions codified in subpatagraphs *(a)* and *(b)* of Article 56 (1) is applicable to the facts of the present case: the possibility of denouncing the declarations of acceptance of the compulsory jurisdiction of the Court is not "implied by the nature of the treaty" and it is established that Honduras did not intend "to admit the possibility of denunciaton or withdrawal".

69. In the cases where the question whether optional clause declarations are inherently susceptible of denunciation has arisen, the Court sustained its jurisdiction without reaching this question. (*Fisheries Jurisdiction* cases (*Jurisdiction of the Court*), *I.C.J. Reports 1973*, pp. 15-16, 60; and *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility*.) In the *Military and Paramilitary Activities* case, the Court noted in its judgment of 26 November 1984 that "the right of immediate termination of declarations with indefinite duration is far from established". But it confined itself to observing that, in any event, the principle of good faith required a reasonable period of notice. (*I.C.J. Reports 1984*, p. 420.)

70. Virtually all authors exclude declarations of acceptance of the compulsory jurisdiction of the Court from the category of treaty provisions that "by their very nature" are subject to denunciation or withdrawal. (Edvard Hambro, "Some Observations on the Compulsory Jurisdiction of the International Court of Justice", *BYBIL*, 1948, pp. 142-143; Julius Stone, *Legal Controls of International Conflicts*, Rhinehart, New York, 1954, p. 127; M. Dubisson, *La Cour internationale de Justice*, LGDJ, Paris, 1964, p. 194; B. S. Murty, "Settlement of Disputes", in Max Sorensen, ed., *Manual of Public International Law*, Macmillan, London, 1968, p. 706; J. M. Verzijl, *International Law in*

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[1] "[I]l est constant pour le service juridique que tant la Commission du droit international que la conférence de Vienne ont considéré cet article 56, au moins dans son principe général, comme la reconnaissance du droit existant, liant les États entre eux, qu'ils soient parties ou non à la convention."

an Historical Perspective, Vol. II, Sijthoff, Leyden, 1976, p. 428; D. W. Bowett, *The Law of International Institutions*, Stevens, London, 1982, p. 271. The few dissents are qualified and cautious in their views with the possible exception of that of Mr. Shihata (*The Power of the International Court to Determine Its Own Jurisdiction*, Nijhoff, The Hague, 1965, p. 167). This is true in particular of the position adopted by Ambassador Shabtai Rosenne, who observes that:

> "With regard to the terminal date, there are still found a few declarations which contain no provision for termination, and it is believed that, as previously discussed, effect would have to be given to any denunciation of these instruments." (*The Law and Practice of the International Court*, Sijthoff, Leyden, 1965, 2nd ed., 1985, p. 472.)

This conclusion is further qualified by his admission that the conclusion applies only to declarations made before 1945 (*ibid.*, p. 417), and the reasoning rests largely on the particular circumstances surrounding the dissolution of the League of Nations and the Permanent Court. (*Ibid.*, at pp. 415-417; see also Sh. Rosenne, *The Time Factor in the Jurisdiction of the International Court of Justice*, Sijthoff, Leyden, 1960, pp. 24-27.)

71. Sir Humphrey Waldock's provisional, almost transient, position is still more guarded. In his second report on the law of treaties, the ILC special rapporteur "thought it right to bring under" the category of treaties for which denunciation or withdrawal was permissible on twelve months' notice, "however reluctantly, treaties of arbitration, conciliation or judicial settlement", in which he includes optional declarations. (*ILC Yearbook*, 1963, Vol. II, p. 68.) However, the doubt evinced by Sir Humphrey Waldock shows that this conclusion was based solely on "the modern trend towards declarations terminable upon notice". The position of the special rapporteur was rejected by almost all the members of the Commission several of whom — in particular Messrs. Castrén, Amado, Verdross, Bartos and Tunkin — protested at the inclusion of treaties of arbitration, conciliation and judicial settlement — or optional declarations — in the list of treaties that could be denounced unilaterally. Only Ambassador Rosenne took the opposite view (*ILC Yearbook*, 1963, Vol. I, pp. 100-107). Professor Briggs pointed out that the only argument used by the special rapporteur in support of his contention — the frequency of clauses providing expressly for a right of denunciation,

> "could with the same force be used to prove the opposite contention, that if treaties were silent about termination the parties had deliberately intended to exclude denunciation" (*ibid.*, at p. 103).

72. Sir Humphrey Waldock immediately acceded to these comments. (*Ibid.*, at p. 106.) At no time thereafter did either he or the other members of the Commission ever point to treaties for the peaceful settlement of disputes or declarations made in pursuance of the Optional Clause as examples of treaties that were inherently subject to unilateral denunciation.

73. In his remarkable article, "Decline of the Optional Clause", *BYBIL*, 1955-1956, Sir Humphrey asserts unambiguously the impossibility, in principle, of renouncing the terms of a declaration made for an indefinite term:

> "When the two States concerned are bound by such a declaration, they cannot free themselves from their obligations simply by giving notice to the Secretary-General. Nor can such a right be implied in Article 36 of the Statute, paragraph 3 of which clearly contemplates an indefi-

> nite continuation unless provision for a time-limit is made when a State makes its declaration.
>
> On principle, therefore, there is no right of unilateral termination of a declaration under the Optional Clause unless the right has been expressly reserved in the declaration. On the same principle also there is not, in the absence of an express term, any right of unilateral variation of a declaration previously made and still in force." (*Ibid.*, p. 265.)

74. This opinion follows from the more general view of most authors that there is certainly no general right of denunciation of a treaty of indefinite duration. (J. L. Brierly, *The Law of Nations*, Clarendon Press, Oxford, 1963, pp. 317 *et seq.*; see also Lord McNair, *The Law of Treaties*, Clarendon Press, Oxford, 1961, pp. 493 *et seq.*; Charles Rousseau, *Droit international public*, t. I, *Introduction et sources*, Sirey, Paris, 1971, p. 213; Sir Robert Jennings, "General Course on Principles of Public International Law", *RCADI*, 1967-II, Vol. 121, p. 565; Paul Reuter, *Introduction au droit des traités*, PUF, Paris, 1985, p. 136.)

75. Applying this general principle, Professor R. P. Anand concludes:

> "There being no provision in the Statute, it seems reasonable to assume that the abrogation or expiry of the declaration will be subject to the general rules covering termination of treaties. This would normally mean that a state having made a declaration without any provision for its termination would not be entitled to cancel it as against other states having declarations for fixed periods except with their consent. Otherwise, termination of the declaration would not be justifiable except by reference to some special rule concerning the termination of treaties, such as, the doctrine of *rebus sic stantibus*. Moreover, under Article 36 (6) of the Statute, it would be for the Court to decide any dispute as to the validity of a purported cancellation of a declaration." (*Compulsory Jurisdiction of the International Court of Justice*, Asia Publishing House, London, 1961, p. 177.)
>
> "It may or may not be expedient as a matter of policy to attach to acceptance of the Optional Clause a time-limit which can be renewed at will, but if a state has not seen fit to do so, it is clear that it intended to be and is bound permanently or until the other signatories of the Clause release it from its obligation." (*Ibid.*, p. 179.)
>
> "On principle, therefore, there is no right of unilateral termination or variation of a declaration under the Optional Clause unless the right has been expressly reserved in the declaration." (*Ibid.*, p. 180.)

76. Moreover, judicial or arbitration clauses, far from being inherently liable to denunciation by mere notification, are particularly stable and, one might say, exceptionally "resistant" to changes in circumstances. Thus, Article 65, paragraph 4, of the Vienna Convention on the Law of Treaties provides:

> "Nothing in the foregoing paragraphs [concerning the procedure to be followed with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty] shall affect the rights or obligations of the parties under any provision in force binding the parties with regard to the settlement of disputes."

77. The Court has, on a number of recent occasions, noted this stability of the dispute settlement clauses. (See *Fisheries Jurisdiction* cases, *Jurisdiction of the Court, I.C.J. Reports 1973*, pp. 20, 65; *United States Diplomatic and Consular*

Staff in Tehran, I.C.J. Reports 1980, p. 28.) Many courts of arbitration have ruled similarly. For example, the award made on 2 September 1930 in the case of *Lena Goldfields Company* v. *Soviet Government* (*Cornell Law Quarterly*, 1959, pp. 31 *et seq.*); the preliminary award made on 27 November 1975 by the sole arbitrator Professor R.-J. Dupuy in the case of *Texaco-Calasiatic* v. *Libyan Government* (see *JDI*, 1977, p. 328).

78. Declarations of acceptance of the compulsory jurisdiction of the Court are of the same nature as these clauses, and can under no circumstances be terminated in the absence of an express provision to that end.

79. Moreover, the practice with respect to optional clause declarations indicates that they may be modified or terminated only when such a right is reserved. Out of 46 States that have made such declarations, 36 have reserved the right to denounce or modify their declarations, subject or not to certain conditions. It would be absurd for States expressly to reserve the right to denounce or amend their declarations of acceptance of the compulsory jurisdiction of the Court if such a right were automatic or could be considered to be implied by the very nature of the declarations. Even Honduras, in its "new declaration" of 22 May 1986,

> "reserves the right at any time to supplement, modify or withdraw this Declaration or the reservations contained therein by giving notice to the Secretary-General of the United Nations".

But, if this right were inherent in any declaration, the stipulation would be totally superfluous.

80. Moreover, Honduras is now claiming the right of modification or partial withdrawal that it vigorously challenged in the case of El Salvador. In 1973 El Salvador sought to replace its 1921 declaration, ratified in 1930 and made for an indefinite term, with a new and more restrictive acceptance. The Honduran Foreign Affairs Minister protested as follows:

> "Leading authorities on international law take the position that a declaration not containing a time limit cannot be denounced, modified or broadened unless the right to do so is expressly reserved in the original declaration and that, accordingly new reservations cannot be made unless this requirement has been fulfilled.
>
> To say otherwise would mean accepting the notion that a State can unilaterally terminate its obligation to submit to the jurisdiction of the Court whenever that suits its interests, thus denying other States the right to summon it before the Court to seek a settlement of disputes to which they are parties. This could well undermine the universally applicable principle of respect for treaties and for the principles of international law; [there follows a paragraph on Paraguay's attempt at unilateral withdrawal of its declaration in 1938 and the protests that this aroused]
>
> For the reasons stated above, my Government challenges the declaration by which El Salvador seeks to revoke and replace its original declaration accepting the jurisdiction of the Court since the new declaration is improperly made, hence completely lacking in validity, and would set a precedent prejudicial to the stability of the legal institutions established by the international community and to the effective exercise of the right of States to settle their disputes under the guarantee provided by the highest judicial body so far conceived by man." (Letter of 21 June 1974, text in Shabtai Rosenne, *Documentation on the International Court of Justice*, Sijthoff and Noordhoff, Alphen, 1979, p. 362.)

81. In that letter, Honduras went on to set out its own thinking on this question more broadly:

> "We deem it appropriate to note in this connexion that my country, faithful to its tradition of total respect for international rules and procedures, has accepted the Statute of the Court without reservations of any kind, since it recognizes that such institutions represent the most appropriate means of settling disputes between States; we would also note that, with profound faith in the principles of law, it has always complied with the arbitral awards or judicial decisions rendered in the disputes which it has submitted for settlement, regardless of whether the Court found in its favour." (Rosenne, *op. cit.*, at pp. 363-364.)

82. The rules of general international law codified by Article 56, paragraph 1, of the Vienna Convention on the Law of Treaties applied to the present case mandate rejection of the "new declaration":

(a) it is established that it was not the intention of Honduras to subject its 1960 declaration to denunciation or restriction — as both the actual text and the letter of 21 June 1974 from its Foreign Affairs Minister demonstrate so unequivocally;

(b) more generally, since no right of denunciation or withdrawal can be deduced from the nature of the declarations of acceptance of the compulsory jurisdiction of the Court, in the absence of such an intention manifested at the time the declaration was made, no State — including Honduras — can modify or withdraw a declaration made for an indefinite term.

83. Thus, the purported "new declaration" of Honduras of 22 May 1986, is invalid.

B. In Any Event, the Change Adopted by Honduras Cannot Be Invoked against Nicaragua

84. Even if Honduras could terminate or modify its declaration, such a change could not be invoked against Nicaragua in the circumstances of this case.

85. Again, the general principles of the law of treaties as codified in the Vienna Convention are relevant. Article 56 (2) provides: "2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1."

86. Like all the provisions of Article 56, paragraph 2 is a direct application of the principle of good faith, and codifies at least the principle of the rule of customary law. Professor Paul Reuter suggests the special relevance of this principle in Inter-American law:

> "The time-limit laid down in Article 56, paragraph 2, is based on that in the Havana Convention on the Law of Treaties (Sixth International Conference of American States, Final Act, Havana, 1928, p. 135.)"[1] (*Introduction au droit des traités*, PUF, 1985, p. 163; see also Taslim O. Elias, *The Modern Law of Treaties*, Oceana Publications, Dobbs Ferry, 1974, p. 106.)

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[1] "Le délai fixé à l'article 56, paragraphe 2, est inspiré de la convention de La Havane sur le droit des traités (Sixth International Conference of American States, Final Act, La Havane, 1928, p. 135)."

The one-year period of notice is the same as that in Article 17 of the Havana Convention.

87. As early as his second report to the ILC on the law of treaties, Sir Gerald Fitzmaurice, describing the law in force, pointed out that the denunciation of a treaty which was silent as to its duration could only take effect after "reasonable notice" (*ILC Yearbook*, 1957, Vol. II, pp. 34-35). The same principle was referred to by Sir Humphrey Waldock, who explained it by the need to promote stability in contractual relations and to preserve the rights of the other parties to a treaty. ("Second Report on the Law of Treaties", *ILC Yearbook*, 1963, Vol. II, pp. 68-69; see also p. 202 and *ILC Yearbook*, 1966, Vol. II, p. 274.) *No* member of the International Law Commission called into question the validity of the principle nor the reasonableness of the period of notice adopted. The only comment was by Mr. Lachs who proposed that the time-limit of 12 months should be *extended* if required by the nature of the rights and obligations provided for under the treaty. (*ILC Yearbook*, 1963, Vol. I, p. 240.) The text was adopted without any changes in the Vienna Convention and without any objection by any member of the ILC or by any State. (See *ILC Yearbook*, 1979, Vol. I, p. 225; Vol. II, Part I, p. 148; and Vol. II, Part II, p. 177.)

88. The Court itself stated clearly that the requirement of reasonable notice of a denunciation is a well-established principle of the law of treaties, independent of the 1969 Convention:

> "A further general indication as to what those obligations may entail is to be found in the second paragraph of Article 56 of the Vienna Convention on the Law of Treaties and the corresponding provision in the International Law Commission's draft articles on Treaties between States and international organizations or between international organizations. Those provisions . . . specifically provide that, when a right of denunciation is implied in a treaty by reason of its nature, the exercise of the right is conditional upon notice, and that of not less than twelve months. Clearly, these provisions also are based on an obligation to act in good faith and have reasonable regard to the interests of the other party to the treaty." (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, I.C.J. Reports 1980*, pp. 94-95; see also p. 96 and the separate opinion of Judge Sette-Camara, *ibid.*, p. 186.)

89. Even apart from the analogy with the law of treaties, a requirement of reasonable notice follows necessarily from the principle of good faith applicable both to treaties and to unilateral declarations by States. Professor Eric Suy writes:

> "When an obligation has been assumed unilaterally by a State and has been brought to the attention of other States directly concerned, who have shown by their attitude that they are relying thereon, it is not always clear on what grounds it can be claimed that this obligation can likewise be changed or cancelled unilaterally if this would shake confidence in international relations. The rule *pacta sunt servanda* or, to extend its scope, the rule that obligations must be respected, is the cornerstone of the whole system of contractual international legal relations. To consider that conventions or treaties are binding only inasmuch as based on a specific meeting of the minds and to deny that unilateral commitments are binding since the intention behind them is not matched by a similar intention evinced by the other party or parties, is to be over-formalistic and to lose sight of the very essence of all

> legal rules, namely the regulation and harmony of relations between parties." (*Les actes juridiques unilatéraux en droit international public*, LGDJ, Paris, 1962, p. 271; see also Elisabeth Zoller, *La bonne foi en droit international public*, Pedone, 1977, pp. 283 *et seq.*)[1]

90. The International Court of Justice supported this analysis in its famous pronouncement of 1974:

> "It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration.
>
> . . . .
>
> One of the basic principles concerning the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential. Just as the very rule of *pacta sunt servanda* in the law of treaties is based on good faith, so also is the binding character of an international obligation assumed by unilateral declaration. Thus interested States may take cognizance of unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected. (*Nuclear Tests* cases, *I.C.J. Reports 1974*, pp. 267-268 and 472-473.)

91. This analysis was reiterated ten years later (*Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 418). It gives rise to important concrete consequences, in regard to the possibility of withdrawing from obligations assumed under such unilateral declarations:

> "The Court finds that the unilateral undertaking resulting from these statements cannot be interpreted as having been made in implicit reliance on an arbitrary power of reconsideration." (*I.C.J. Reports 1974*, pp. 270, 475.)
>
> "However, the unilateral nature of declarations does not signify that the State making the declaration is free to amend the scope and the contents of its solemn commitments as it pleases." (*Military and Parамili-*

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[1] "On ne voit pas toujours pour quelle raison une obligation assumée unilatéralement par un Etat, une fois qu'elle est arrivée à la connaissance des Etats directement intéressés et que ceux-ci ont démontré par leur attitude qu'ils s'y fiaient, serait susceptible d'être modifiée ou annulée de la même façon s'ils mettaient la sécurité des rapports internationaux à l'épreuve. La norme *pacta sunt servanda* ou, pour en étendre la portée, la norme selon laquelle les engagements doivent être tenus, est la clé de voûte de tout le système des rapports juridiques internationaux sur le plan contractuel. Considérer les conventions ou traités comme obligatoires pour l'unique raison qu'ils se fondent sur la volonté concordante de certains sujets de droit, en refusant de reconnaître quelque valeur obligatoire aux engagements unilatéraux parce que la volonté ne serait pas soutenue par une volonté concordante, c'est témoigner d'un formalisme trop rigide qui perd de vue l'essence même de toute réglementation, à savoir la sécurité et l'harmonie des rapports entre les sujets."

tary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984, p. 418.)

92. The Court stated explicitly in its Judgment of 26 November 1984 that reasonable notice was required before withdrawing from optional declarations of indefinite duration:

> "But the right of immediate termination for declarations with indefinite duration is far from established. It appears from the requirements of good faith that they should be treated, by analogy, according to the law of treaties, which requires a reasonable time for withdrawal from or termination of treaties that contain no provision regarding the duration of their validity." (*Ibid.*, p. 420.)

93. The separate opinion of Judge Mosler is even more explicit:

> "It may be open to doubt whether the Nicaraguan Declaration can be terminated with legal effect immediately on notice, or only after a lapse of a certain time after such notice. Article 56 of the Vienna Convention refers to the 'nature of the treaty', or envisages a twelve months' notice. Applying the same ideas by analogy to the 'consensual bond' effected by declarations under the Optional Clause, the 'nature' of the bond is characterized by the equal significance of the obligations. This results from Article 36, paragraph 2, without any special reservation being necessary as provided for in paragraph 3 of the same Article. The Court emphasized in the case of *Right of Passage over Indian Territory (Preliminary Objections)* (*I.C.J. Reports 1957*, p. 145), that the principle of reciprocity forms part of the system of the Optional Clause. It does not follow from the 'nature' of an 'unconditional' declaration that it may be terminated at any time and with immediate effect. Article 56 of the Vienna Convention shows — and here again an analogy is suggested — that the termination of an obligation must be governed by the principle of good faith. Withdrawal without any period of notice seems to me not to correspond with this principle if a declaration has been made explicitly unconditional." (*I.C.J. Reports 1984*, p. 467.)

94. In its Judgment, the Court said that in that case the question of what reasonable period of notice would legally be required did not need to be further examined. (*Ibid.*, p. 420.)

95. The same is probably true here: Although the "new declaration" was deposited with the United Nations Secretary-General on 22 May 1986, he did not circulate it until 30 June. The "reasonable time" could not begin to run before that date. (Cf. Sh. Rosenne, *The Law and Practice of the International Court*, Sijthoff, Leyden, 1986, at p. 471.) The Application in the present case was filed on 28 July 1986, only four weeks after the circulation. Surely, a reasonable time had not elapsed by then.

96. Without accepting absolutely the period of 12 months provided for under Article 56, paragraph 2, of the Vienna Convention, the Court has said that 12 months is an indication of what would be a reasonable period:

> "Some indications as to the possible periods involved, as the Court has said, can be seen . . . in Article 56 of the Vienna Convention on the Law of Treaties and in the corresponding article of the International Law Commission's draft articles on treaties between States and international organizations or between international organizations." (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*,

> *I.C.J. Reports 1980*, p. 96. See also the separate opinion by Judge Sette-Camara, *I.C.J. Reports 1980*, p. 187.)

What is more, these provisions present this period as a minimum — "*not less than twelve months' notice . . .*".

97. Another indication of what "reasonable notice" should be taken to mean in this instance was given by Honduras itself when, in 1974, it challenged the withdrawal by El Salvador of its declaration of 1921. This withdrawal was effected on 26 November 1973, and Honduras protested on 21 June 1974, some seven months later. It is thus clear that at that date, Honduras did not believe that a reasonable period had elapsed. The same must necessarily apply in the present case.

98. In any event, "what is reasonable and equitable in any given case must depend on its particular circumstances" *(ibid.)*. It is essential that, in each case of this type, the notice given should be sufficient to comply with the *ratio legis* on which the requirement for reasonable notice is based, that is to allow the other States concerned to take appropriate measures.

99. Pursuant to the Optional Clause, the essential consideration is as follows: a State making a declaration for an unlimited period "offers" the other States parties to the Statute of the Court the permanent opportunity to settle in law any dispute they might have with it. This commitment would be devoid of substance if the State undertaking it could escape the Court's jurisdiction by means of a simple notification as soon as it got wind of a possible claim against it.

100. Superficially, the question might be thought analogous to that posed when a State declares its acceptance of the compulsory jurisdiction of the Court and immediately thereafter files an application against a State having earlier undertaken the same commitment *(Right of Passage over Indian Territory, I.C.J. Reports 1957)*. It might be thought that the solution adopted there could be applied to the present case. However, as Judge Mosler pointed out, any analogy between the two situations is extremely misleading (*Military and Paramilitary Activities in and against Nicaragua, I.C.J. Reports 1984*, p. 467 (separate opinion of Judge Mosler)). First of all, Article 36, paragraphs 2 and 4, of the Statute contains clear provisions leaving no doubt that such declarations take immediate effect upon notification. The Statute makes no such provision in the event of the withdrawal of such a declaration. Secondly, and above all, a State that withdraws a declaration is in a completely different situation from a State that makes one: the latter undertakes a commitment in compliance with the spirit and letter of the Statute and the United Nations Charter; the former, on the other hand, is endeavouring to withdraw from an obligation that it has assured other States it will abide by.

101. No doubt a denunciation can produce an immediate effect if the State in question expressly retains such a right. But Honduras has not done so. On the contrary, it specified that it bound itself "for an indefinite term", and confirmed in 1974 that it recognized the Court as constituting "the most appropriate means of settling disputes between States". (Letter from the Minister of Foreign Affairs of Honduras, dated 21 June 1974, para. 81, *supra.*)

102. At the very least, a State in such a situation should not be permitted to oppose the jurisdiction of the Court, to which it freely consented, when another State, having a dispute with it at the time of the denunciation, takes all reasonable steps to bring the matter promptly before the Court.

103. Here again, it is doubtless not necessary to ask what might, in the abstract, constitute reasonable notice in such a situation. It is enough to observe

that it would be neither "reasonable" nor equitable to deny that the Court had jurisdiction in the circumstances of the present case:

(i) as will be shown below, a dispute had already arisen and was still in existence between Nicaragua and Honduras at the time when the latter decided to amend its declaration, on 22 May 1986 (see Chap. 5, paras. 235-283);

(ii) the "new declaration" by Honduras was only notified to the States parties to the Statute by the Secretary-General of the United Nations on 30 June 1986; it is therefor only as from that date that notice began to run (see para. 95, *supra*);

(iii) by filing an Application on 28 July 1986, namely within a period of days, Nicaragua has clearly shown itself to be reasonably diligent in this matter.

104. From whatever angle the question is examined, it is quite clear that the period between the time when Honduras claimed to have withdrawn from the system introduced by the Optional Clause in Article 36, paragraph 2, of the Statute and the date on which Nicaragua launched its Application did not amount to "reasonable notice". Thus the "new declaration" cannot be invoked against Nicaragua.

PART II. JURISDICTION UNDER THE PACT OF BOGOTÁ

CHAPTER 2

ARTICLE XXXI OF THE PACT OF BOGOTÁ PROVIDES A SEPARATE AND INDEPENDENT BASIS OF JURISDICTION IN THIS CASE

105. The Application of Nicaragua also maintains that the Court has jurisdiction in this case under the provisions of Article XXXI of the Pact of Bogota, to which both Honduras and Nicaragua are parties. Article XXXI in Chapter Five of the Pact entitled "Judicial Procedure", provides:

> "In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:
>
> *(a)* the interpretation of a treaty;
> *(b)* any question of international law;
> *(c)* the existence of any fact which, if established, would constitute the breach of an international obligation;
> *(d)* the nature or extent of the reparation to be made for the breach of an international obligation."

The present case involves a legal dispute between two parties to the Pact concerning the interpretation of treaties and questions of customary international law. (Case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States), Jurisdiction and Admissibility, I.C.J. Reports 1984*, pp. 392, 431-438. See also Chapter 3, *infra*.) It thus falls unambiguously within the provisions of Article XXXI.

106. As discussed in Part I, Nicaragua and Honduras have both made declarations submitting to the jurisdiction of the Court under Article 36 (2) of the Statute. In 1986, Honduras entered a "new declaration". To this point Nicaragua's Memorial has argued that the "new declaration" is not applicable to the present case, and that jurisdiction is therefore present on the basis of the two coinciding Article 36 (2) declarations. If the Court agrees with Nicaragua's submission on that point, there is no need to go further because jurisdiction is established.

107. If, on the other hand, the Court is not satisfied that the 1986 "declaration" is inapplicable so that jurisdiction cannot properly be founded on Article 36 (2), it is Nicaragua's position that Article XXXI of the Pact of Bogota provides a wholly independent basis of jurisdiction. To this Honduras replies that the 1986 reservation also modifies and limits its amenability to jurisdic-

tion under Article XXXI of the Pact of Bogatá, and that in any case resort to the Court under the Pact is subject to the condition of prior exhaustion of the conciliation procedure. This position cannot be sustained.

A. The Purported Reservation of Honduras to the Pact of Bogotá Was Not Made at the Time of Signature or Adherence to the Treaty and Is Therefore Ineffective to Vary the Obligations of Honduras under the Pact

108. In the context of a declaration under Article 36 (2) of the Court's Statute, a reservation is a statement limiting the scope of the declarant State's submission to jurisdiction. It may be made at the time the State first makes its declaration. However, as discussed in Part I, *supra*, if the right to alter or terminate the declaration is reserved expressly or by implication, a reservation limiting jurisdiction may be made unilaterally by the declarant at any subsequent time, on reasonable notice. Such a modification of the declaration operates to bar the assertion of a claim covered by the reservation if it takes effect before the Application is filed. (*Right of Passage over Indian Territory, Preliminary Objections, I.C.J. Reports 1957*, pp. 142-143.)

109. Although Article XXXI, in its main features, is cast in the same terms as Article 36 (2) of the Statute of the Court, it is not a unilateral submission to jurisdiction as is a declaration under the Optional Clause. It is a provision of a multilateral treaty. As such, it is a binding obligation as between any two parties to the Pact. Judge Jimenez de Arechaga has said that "at most the cited Article XXXI of the Pact of Bogota does not constitute, in spite of its text, a strict application of the system of the optional clause". Instead, the obligatory competence of the Court under that provision is based "not in the optional clause properly (art. 36, 2) said but in the Conventions and Treaties in force (art. 36, 1)". (Cited in F. Fernandez-Shaw, *La Organizacion de los Estados Americanos*, Madrid, 1962, p. 411.) The Pact is listed in the *Yearbooks* of the Court from 1948 to 1962 under the heading "Other Instruments", not "Acceptance of the Compulsory Jurisdiction of the Court" (see *I.C.J. Yearbook 1947-1948*, p. 143), and since 1962 under "Chronological list of other instruments governing the jurisdiction of the Court", rather than "Declarations recognizing as compulsory the jurisdiction of the Court" (*I.C.J. Yearbook 1961-1962*, p. 104).

110. Unlike the situation with respect to unilateral declarations under Article 36 (2) of the Statute of the Court, a party may not alter or vary its obligation under Article XXXI by its own unilateral act, any more than a party to the Convention on Diplomatic Privileges and Immunities could unilaterally modify the application to itself of the compromissory clause in that agreement. Thus, Honduras's "new declaration" and its "reservations" cannot affect its amenability to suit under Article XXXI.

Honduras's new declaration was notified to the Secretary General of the Organization of American States on 22 May 1986. Nicaragua entered a protest pointing out that the attempted reservation "has no juridical effect whatever and constitutes a grave violation of the Pact of Bogota" (Note from Minister of Foreign Affairs of Nicaragua to the Secretary General of the Organization of American States, 18 May 1987 (Nicaragua's Annex 22)).

Original text in Spanish: "en rigor, el citado Articulo XXXI del Pacto de Bogota no constituye, pese a su texto, una aplicacion estricta del sistema de la clausula opcional".

"No en la clausula opcional propriamente dicha (art. 36, 2), sino en las Convenciones y Tratados vigentes (art. 36, 1)."

111. In the context of a bilateral or multilateral treaty, a "reservation" is a derogation from the obligation of the treaty and must be made at the time of signature, or in any event when the party adheres to the treaty. Thus, Article 2 (1) *(d)* of the Vienna Convention on the Law of Treaties defines a reservation as

> "a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State." (United Nations Conference on the Law of Treaties, doc. A/CONF.39/27, 22 May 1969).

112. The purported Honduran reservation fits part of this definition very well. It forms part of a unilateral statement that "purports to exclude or modify the legal effect of" Article XXXI of the Pact of Bogota "in [its] application to that State". But unlike the reservations to the Pact by Argentina, El Salvador, the United States and Nicaragua itself, they were not made at the time of signature or ratification, and thus cannot be effective to modify the obligations undertaken by Honduras.

113. Article 2 (1) *(d)* of the Vienna Convention expresses an unvarying rule of customary international law, about which no State or author has ever, to the knowledge of Nicaragua, expressed the slightest doubt. The rule conforms to the normal practice of multinational depositaries. As long ago as 1950, the Report of the Secretary-General of the United Nations on practices of the Secretariat with regard to reservations stated: "A State may have a reservation when signing, ratifying or acceding to a convention." (A/1372, para. 46.) In a 1976 Aide-Memoire on the Practice of the Secretary-General as depositary of multilateral treaties with respect to reservations and objections, the Legal Counsellor of the United Nations stated that the practice of the Organization in regard to the definition of "reservation" follows Article 2 (1) *(d)* of the Vienna Convention. (*United Nations Legal Yearbook*, 1976, p. 218.)

114. So also with the Organization of American States. In its reply to a questionnaire from the United Nations Secretary-General in 1962, the OAS asserted that it complies very strictly in its practice with the foregoing principles. Indeed, it does not even consult other signatories to the treaty unless the reservation is included in the instrument of ratification. (1965 *ILC Yearbook*, Vol. II, p. 90.) Nor does it impose any time-limit for parties to lodge objections to proposed reservations. (*Ibid.*, p. 94.)

115. The requirement that reservations be contemporaneous with signing or adherence to a treaty has a special place in the law of the Western Hemisphere. Article 6 of the Havana Convention on the Law of Treaties provides for reservations only at the time of ratification. See also Resolution XXIX of the Eighth International Conference of American States at Lima in 1928. Resolution X of the Inter-American Juridical Committee (1959) is even stricter:

> "I. In the case of ratification or adherence with reservations, the ratifying or adhering State shall send to the Pan American Union be-

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In the present case the Secretary General of the OAS has not consulted the signatories to the Pact of Bogota with respect to the purported reservation of Honduras. Nicaragua has nevertheless interposed its objection within a year of the notification to the Secretary General by Honduras.

> fore depositing the instrument of ratification or adherence the text of the reservations it proposes to make . . .
>
> II. Reservations made to a treaty at the time of signature shall have no effect if they are not reiterated before depositing the instrument of ratification."

116. Needless to say, the main authors who have studied the question of reservations to treaties are unanimous in support of the rule that reservations must be formulated "when signing, ratifying, accepting, approving or acceding to the treaty". (See, e.g., W. W. Bishop, Jr., "Reservations to Treaties", *RCADI*, 1961, Vol. II, p. 252; T. O. Elias, *The Modern Law of Treaties*, Dobbs Ferry, N.Y., 1974, pp. 32-33; P. H. Imbert, *Les réserves aux traités multilatéraux*, Paris, 1979, p. 164; J.-M. Ruda, "Reservations to Treaties", *RCADI*, 1975, Vol. III, pp. 114, 146, 193; M. D. Kappeler, *Les réserves dans les traités*, Verlag für Recht, 1958, p. 24; E. Jiménez de Aréchaga, *El Derecho Internacional Contemporaneo*, Madrid, 1980, p. 50; C. Sepúlveda, *Curso de Derecho Internacional Público*, 6th ed., Mexico City, 1974, pp. 128-129.)

117. Any attempt by a party to vary the obligations entered into, after adherence to the treaty, is simply an offer to amend it. As such it can only become effective in accordance with the treaty provisions for amendment or with the consent of the parties. (See Vienna Convention on the Law of Treaties, Part IV, Arts. 39-41.) There are no special provisions for amendment in the Pact of Bogota, and the parties have not consented.

118. Honduras seems to attach some significance to the fact that "no objection, either from Nicaragua or from any other country, was raised by any of the member States of the Organization upon receipt of the Declaration of Honduras" (Memorial, at pp. 77-78, *supra*; see also pp. 56, 79, *supra*). This observation is incorrect in point of fact: Nicaragua entered an objection to the purported reservation on 15 May 1987, by note from its Minister of Foreign Affairs to the Secretary General of the OAS (Ann. 22). Although the Secretary General circulated the purported reservation to the Permanent Representatives of the member States (Memorial, Ann. 41), this was in no sense a notification to the contracting States with a view to their taking part in a "decision as to the action to be taken in regard to such proposal" as required by Article 40 of the Vienna Convention. And in any event, the silence of the parties cannot be taken as such a "decision" or as the "negotiation and conclusion of [an] agreement for the amendment of the treaty" within the meaning of that Article.

119. Thus the purported new declaration of Honduras cannot take effect either as a reservation or an amendment to the Pact of Bogotá. The obligations of Honduras under the Pact remain unimpaired by it.

B. Article XXXI Establishes a Binding Obligation to Submit to the Jurisdiction of the Court with Respect to Disputes in the Enumerated Categories between Parties to the Treaty, Independent of Any Other Unilateral or Bilateral Undertaking of Any Party with Respect to Such Disputes

120. Honduras contends that Article XXXI itself was meant to extend only to cases where the respondent State is otherwise subject to the jurisdiction of the Court by virtue of a separate declaration filed under Article 36 (2) of the Statute. On this reading, Article XXXI is not an independent and binding obligation, but simply an agreement to resort to the Court when the par-

ties to the dispute were otherwise obligated or disposed to do so. (Memorial, at pp. 65, 75, *supra*.) This position is inconsistent with the language of Article XXXI, with the purpose of the Article, with the *travaux préparatoires*, and with the understanding of the parties at the time the Pact was signed. It is rejected by every publicist who has written on the Pact of Bogotá. They not only regard Article XXXI as a submission to jurisdiction independent of any declaration that a State may have made under Article 36 (2) of the Statute of the Court, but many point to this independent acceptance of compulsory jurisdiction as one of the prime achievements of the Pact of Bogotá. (See paras. 124-126, 158, *infra*.)

1. The Language of the Text

121. The obligation of Article XXXI is expressed in categorical and unqualified terms. In contrast to Article 36 (2) of the Court's Statute, which invites a generalized declaration recognizing the jurisdiction of the Court (subject of course to such reservations as the declaring State may wish to assert), Article XXXI is an undertaking of "the High Contracting Parties". It is limited *ratione personae* to "any other American State", and *ratione temporε* "so long as the present Treaty is in force". But it imposes no limit *ratione materiae* on the categories of cases listed in Article 36 (2). As noted above, it is listed in the *Yearbooks* of the Court under "Other Instruments", as opposed to declarations recognizing the compulsory jurisdiction of the Court. (See para. 109, *supra*.)

122. The Memorial of Honduras says that, "Article XXXI of the Pact authorises each State, *in accordance with any declaration made by that State before the occurrence of a dispute*, to seise the Court unilaterally" (Memorial, at p. 65, *supra* (emphasis added)). Of course, the italicized language in this quotation does not appear in Article XXXI. It is an invention of the Memorial. If Article XXXI meant what Honduras says it does, there would have been no need to include it in the Pact at all. For quite apart from Article XXXI, any State is already authorized to seize the Court unilaterally "in accordance with any declaration made by that State before the occurrence of the dispute". Thus Honduras's position contravenes the general maxim of treaty interpretation that the Court should give an operational effect to every provision of the treaty.

123. Recognition of the jurisdiction of the Court "*ipso facto* and without the necessity of any special agreement" in Article XXXI involves an element of reciprocity in that the undertaking is made only with respect to other

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The Memorial of Honduras seems to suggest at one point that a bilateral or multilateral agreement among States to submit to the jurisdiction of the Court with respect to disputes between them falling within the terms of Article 36 (2) would be inconsistent with the Statute of the Court. According to the argument of Honduras, such an agreement would therefore be void under Article 103 of the United Nations Charter, of which the Statute is a part. (Memorial, at p. 77, *supra*.) The asserted inconsistency between the compulsory obligation of Article XXXI and the Statute is illusory. Although the *scope* of the Article XXXI submission is identical to that described in Article 36 (2) of the Statute, the *basis* for jurisdiction, as noted in the text, *supra*, is to be found in Article 36 (1), which covers "all matters specially provided for . . . in treaties or conventions in force". See Judge E. Jiménez de Aréchaga, quoted paragraph 109, *supra*, and the treatment in the *Yearbooks* of the Court. (*Ibid.*)

parties[1]. Nevertheless, acceptance of the Court's jurisdiction is not qualified by the phrase "in relation to any other State *accepting the same obligation*", as in Article 36 (2). The conception of reciprocity imported by this phrase is fundamental to the practice with respect to reservations in optional clause declarations. (See, e.g., *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*.) Indeed, that practice would make little sense without such a conception of reciprocity. But the ambulatory notion of reciprocity embodied in Article 36 (2), whereby the coincidence of declarations is measured as of the time an Application is filed, is not found in Article XXXI of the Pact. Instead, the Court's jurisdiction is recognized once and for all and without limitation. The absence of the Article 36 (2) reciprocity principle in the Pact of Bogotá negates Honduras's contention that Article XXXI permits subsequent "reservations" derogating from the obligation originally assumed by the Party.

2. *Purpose*

124. The fundamental purpose of the Pact of Bogotá was to establish compulsory adjudication, either by the Court or by arbitration, as the ultimate mode of settlement of all disputes, whatever their nature, arising between American States. The US Delegation Report states that "[t]he most important feature of the treaty on pacific settlement consists of the provisions for compulsory judicial settlement and arbitration contained in chapters four and five". (United States Department of State, *Report of the US Delegation to the Ninth International Conference of American States*, Washington, 1948, p. 47. See also, e.g., A. v. W. Thomas and A. J. Thomas, Jr., *The Organization of American States*, Dallas, 1963, p. 240; A. Herrarte, "Solución Pacífica de las Controversias en el Sistema Interamericano", p. 225, in Secretario General, Organización de los Estados Americanos, *Sexto Curso de Derecho Internacional Organizado por el Comité Jurídico Interamericano*, OEA/Ser.Q/V.C-6, CJI-40, p. 225; Inter-American Institute of International Legal Studies, *The Inter-American System, Its Development and Strengthening*, Dobbs Ferry, N.Y., 1966, pp. 78-79; R. L. Cardon, *La Solución Pacífica de Controversias Internacionales en el Sistema Americano*, Buenos Aires, 1954, p. 75.)

125. The Memorial of Honduras itself recognizes this avowed purpose of the Pact (Memorial, at pp. 62-63, *supra*). It traces the history of this objective back to 1826 and the beginnings of co-operative relations among the countries of the American hemisphere (*ibid.*, at pp. 61-62, *supra*). The climax of this effort is described by the Memorial in a statement that Nicaragua accepts and that we quote here in full:

> "At the 'Inter-American Conference on the Problems of War and Peace', held in Mexico in March 1945, Resolution XXXIV stressed that the Inter-American Legal Committee on Peace should

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[1] Although Article XXXI speaks of acceptance of jurisdiction "in relation to any other American State", and thus, "[e]l Pacto no exige expresamente la reciprocidad; no obstante, creemos que el compromiso solo obliga con relación a cualquier otro Estado americano *que acepte la misa obligación*, como indica el Estatuto de la Corte (art. 36, parr. 2)". ("The pact does not expressly require reciprocity; notwithstanding, we believe that the commitment is only obligatory in relation to any other American State *that accepts the same obligation* as the Statute of the Court indicates.") (R. L. Cardon, *La Solución Pacífica de Controversias Internacionales en el Sistema Americano*, Buenos Aires 1954, p. 77; see also F. Fernández-Shaw, *La Organización de los Estados Americanos*, Madrid 1962, p. 411.)

> '. . . coordinate the continental instruments for the prevention and peaceful solution of controversies in a manner such that the gradual and progressive application thereof shall necessarily result in the achievement of the desired ends'.
>
> Thus in the terms of reference given to the Committee, *two of the key ideas* had appeared which were to inspire the drafting, in successive draft texts, of what was to become some three years later the Pact of Bogota:
>
> First, the attempt to establish a rationalized *system* for settlement of disputes in the light of the lessons learnt from attempts made in previous treaties, which were heterogeneous, over-numerous and which had, for the most part, remained dead letters.
>
> Second, and this is perhaps even more remarkable, the assignment to such a system of the ultimate purpose of rendering compulsory, and as it were irreversible, the recourse to solutions that could only be peaceful. Such a system would offer, at the free choice of the States, a wide range of procedures for resolving disputes." (Memorial, at pp. 62-63, *supra* (emphasis in original).)

126. The objective "of rendering compulsory, and as it were irreversible, the recourse to solutions that could only be peaceful" is formally embodied in the OAS Charter itself, also a product of the Bogotá Conference. Article 25 states in general terms that in the case of disputes that cannot be settled by diplomatic means, "the Parties shall agree on some other peaceful procedure that will enable them to reach a solution". To implement this general obligation, Article 26 provides:

> "A special treaty will establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application, so that no dispute between American States shall fail of definitive settlement within a reasonable period."

127. The Pact of Bogotá is the special treaty envisioned in Article 26 of the OAS Charter, and the obligation of Article 25 of the Charter is reiterated and elaborated as the central conception of the Pact in Article II:

> "[I]n the event that a controversy arises between two signatory states which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles. . . ."

128. The Pact provides for the usual array of voluntary methods of dispute settlement: good offices, mediation, investigation, conciliation and so forth. Specific modalities are established for each of these. A Party has complete freedom to select any of these means in an attempt to settle a dispute with another Party, and they may use "such special procedures as, in their opinion, will permit them to arrive at a solution" (Art. II. See Chap. 4, *infra*). All this corresponds with the objective noted in the Honduran Memorial that the "system would offer, at the free choice of the States, a wide range of procedures for resolving disputes" (Memorial, at p. 63, *supra*). But the key feature of the system is that a party can insist on compulsory settlement of *any* dispute, either by the Court under Article XXXI or Article XXXII or by

binding arbitration under Chapter Five, "if the Court declares itself to be without jurisdiction to hear and adjudge the controversy . . ." (Art. XXXV).

129. In support of its interpretation of Article XXXI Honduras argues that it is hardly thinkable for a State accepting the jurisdiction of the Court under the optional clause subject to certain reservations (and with the possibility of interposing further reservations at a later time) to accept at the same time an unlimited obligation of judicial settlement for the same types of controversies under the Pact. (Memorial, at pp. 75-77, *supra*.)

130. Honduras acknowledges that:

> "such a duality of schemes of recognition is theoretically not inconceivable. For example, many cases exist in which, in parallel to a declaration under Article 36, paragraph 2, made unilaterally and rendered subject to reservations, a State has agreed to bind itself without reservations in its relations with another State, for example in a treaty of friendship and co-operation. *The State concerned does so because, having regard to the nature of the relationship that it has traditionally had with the other State, it takes the view that there is no point in restricting the competence of the Court. . . .*" (*Ibid.*, at p. 77, *supra* (emphasis supplied).)

That passage describes precisely the basis on which the American States were prepared in 1948 to accept *inter se* a "compulsory and . . . irreversible" submission to the jurisdiction of the Court; when in 1945 the San Francisco Conference had rejected the idea of compulsory jurisdiction for the International Court of Justice and settled instead on the looser framework of the optional clause[1]. They conceived themselves as a more homogeneous community, bound by a distinctive regional history, culture, organization and political/legal tradition, where compulsory judicial or arbitral settlement was both possible and desirable.

131. As Charles G. Fenwick, the Director of the Department of International Law of the Pan American Union said:

> "There might be ground for not being willing to submit political controversies with non-Americans to the International Court; but within our inter-American circle, where we have built up a spirit of confidence, where we have developed a feeling of common interest, we ought to be able to say once and for all that every controversy, juridical and political should be submitted to the Court at The Hague. That view prevailed, and that view is the substance of the Treaty." (C. G. Fenwick, "Remarks", in *The Results of Bogota, Lecture Series on the Bogota Conference held at the Pan American Union, May 24, 25 and 26, 1948*, p. 38. See also, e.g., J. M. Yepes, *Del Congreso de Panama a la Conferencia de Caracas, 1826-1954*, Caracas, 1955, p. 217.)

132. To accept the Honduran contention that subsequent reservations to an optional clause declaration are automatically incorporated into the Article XXXI obligation under the Pact would frustrate the prime objective of the Pact to erect a comprehensive system of compulsory dispute settlement. Indeed, the Honduran Memorial acknowledges that

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[1] Indeed, a majority of the delegations at San Francisco, especially the smaller ones, would have preferred a true compulsory jurisdiction and accepted the optional clause as an alternative only because the Great Powers particularly the United States and the Soviet Union, would have not accepted the Charter under those terms. (See generally *UNCIO Documents*, Vol. 13.)

> "[i]t is in effect Articles XXXI to XXXV that hold the system in place and guarantee, in principle, that a peaceful solution is inevitable. Upon closer examination, however, it will be found that the system is not, it seems, held together so absolutely securely as its promoters had wished." (Memorial, at p. 64, *supra*.)

133. It is impermissible, however, for the Court to adopt an interpretation of a treaty that frustrates its acknowledged principal objective if a reading of the text that promotes the objective is fairly available.

3. Travaux Préparatoires

134. The Pact of Bogota was based on two preliminary drafts prepared by the Interamerican Juridical Committee, the first in 1945 and the second in 1947. Each of these drafts provided for voluntary resort to the International Court of Justice by agreement of the parties. Thus, Article XVIII of the 1947 draft provided:

> "Notwithstanding the provisions of the preceding article [establishing compulsory arbitration for 'controversies of any nature'], it is recognized that the Parties, if in agreement to do so, may submit their controversies to the International Court of Justice, when they have accepted previously its obligatory jurisdiction under the terms of Article 36 of its Statute.
>
> The controversies to which this article is applicable are those referring to the following matters: [listing the four categories appearing in Article 36 (2) of the Statute of the Court]." (United States Department of State, *Report of the US Delegation to the Ninth International Conference of American States*, Appendix One — Preparatory Documents, p. 137.)[1]

135. The draft Article embodies the Honduran contention. Under it there is no obligation of judicial settlement at all. The possibility of recourse to the Court for disputes in the enumerated categories comes about only if the Parties are "in agreement to do so" and only if "they have accepted previously its obligatory jurisdiction". In such a case, the principle of reciprocity as embodied in Article 36 (2) would also be applicable. If the respondent had entered an applicable reservation before the case was filed, it would vitiate the previous submission to obligatory jurisdiction required by the draft Article.

136. The difficulty with the Honduran position is that the Pact of Bogota did not accept Article XVIII of the 1947 draft. On the contrary, it decisively rejected the voluntary approach of the draft Article. As the Memorial of Honduras says there is "a qualitative leap as compared with the attempts made in the earlier treaties" (Memorial, at p. 64, *supra*). The contrast between the voluntary scheme of the draft Article and the peremptory language of Article XXXI is striking. The rejection of the draft Article evinces the unmistakable intention of the parties to the Pact to bind themselves to submit legal disputes to the Court as a matter of positive obligation, without regard to any other voluntary declaration or agreement. Article XXXI is not an

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[1] Article XXIII of the 1945 draft provided:

> "In the event that the parties to a controversy decide to submit it to judicial settlement, the court shall, as a general rule, be the International Court of Justice . . ." (*Ibid.*, at pp. 121, 129.)

agreement to agree. It is not an incorporation of obligations already assumed in reciprocal declarations of the parties under Article 36 (2) at the time an application is filed. It is an independent mutual treaty obligation.

4. Contemporaneous Understanding

137. The position that Article XXXI is an independent basis of jurisdiction, not dependent on and not qualified by any declarations parties may have made under Article 36 (2), is confirmed by the conduct of the parties at the time the Pact was negotiated. The United States did not ratify the Pact, but it was active in the negotiating process and signed the treaty at the end of the Bogota Conference. However, it signed subject to the reservation that

> "The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory *ipso facto* and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4 of the Statute of the Court, and in force at the time of the submission of any case."

138. This reservation to the Pact was designed to ensure that the reservations to the United States declaration of 14 August 1946, submitting to the Court's jurisdiction under Article 36 (2) of the Statute, would not be overridden by United States adherence to the Pact of Bogota. The quoted reservation would have been superfluous[1] had Article XXXI been intended, as Honduras asserts, to incorporate of its own force reservations and other limitations on Article 36 (2) declarations of the parties to the Pact. The understanding that Article XXXI does not incorporate limitations in Article 36 (2) declarations is expressly stated in the Report of the United States delegation to the Bogota Conference explaining its reservation to the Pact quoted above:

> "Chapter four of the Treaty ('Judicial Procedure') begins by incorporating acceptance of the jurisdiction of the International Court of Justice as compulsory *ipso facto* and without special agreement in juridical disputes falling within the categories mentioned in article XXXVI (2) of the Statute of the Court (article XXXI) . . . *However, [article XXXI] does not take into account the fact that various states in previous acceptances of the Court's jurisdiction under article XXXVI (2) of the Statute have found it necessary to place certain limitations upon the jurisdiction thus accepted.* This was the case in respect to the United States, and since the terms of its declaration had, in addition, received the previous advice and consent of the Senate, the Delegation found it necessary to interpose a reservation to the effect that the acceptance of the jurisdiction of the Court as compulsory *ipso facto* and without special agreement is limited by any jurisdictional or other limitations contained in any declaration deposited by the United States under article XXXVI (4) of the Statute of the Court in force at the time of the submission of any case." (Emphasis added.) (United States Department of State, *Report of the US Delegation to the Ninth International Conference of American States*, Washington, 1948, p. 48.)

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[1] The Honduran Memorial dismisses the United States reservation as "superfluous" (Memorial, at p. 75, footnote 2). That of course does not accord with the explanation given by the United States delegation and discussed in the text after this footnote.

The views of the United States delegation are especially authoritative because of the leading role played by the United States in the development of the Pact.

139. If Article XXXI did not incorporate reservations to Article 36 (2) declarations already existing in 1948 when the Pact was signed, *a fortiori* it would not incorporate limitations on such a declaration made after the Pact entered into force, like the purported Honduras "new Declaration". The text of the United States reservation to the Pact bears expressly on this point, also. It applies to "any jurisdictional or other limitations contained in any declaration deposited by the United States . . . *at the time of the submission of the case*" (emphasis added). The italicized language was necessary if the United States reservation to the Pact was to be effective to cover limitations that the United States might subsequently interpose to its Article 36 (2) declaration.

5. The Opinions of American Jurists and other Publicists

140. Honduras recognizes that "the greater number of authors, who in fact represent the majority doctrine on the subject" hold that "Article XXXI of the Pact, in referring to Article 36, paragraph 2, of the Statute of the Court, determines the extent of the Court's jurisdiction *ratione materiae*" — that is to say, without reference to the terms of any unilateral declaration a Party may have made under the optional clause. (Memorial, at p. 66, *supra*.) It is thus almost unnecessary to cite authority for this proposition. Nevertheless, we list a few of the pronouncements here to illustrate the uniformity and categorical nature of the opinions expressed by the most qualified experts. (E.g., F. V. Garcia-Amador, "Report 92", in Max Planck Institute for Comparative Public Law and International Law, *Judicial Settlement of International Disputes*, New York, 1974; F. Fernandez-Shaw, *La Organizacion de los Estados Americanos*, Madrid, 1963 p. 411; A. Herrarte, *Solucion Pacifica de las Controversias en el Sistema Interamericano*, 220, 225, in Secretario General, Organización de los Estados Americanos, *Sexto Curso de Derecho Internacional Organizado por el Comite Juridico Interamericano*, OEA/Ser.Q/V.C-6, CJI 40; Inter-American Institute of International Legal Studies, *The Inter-American System, Its Development and Strengthening*, Dobbs Ferry, N.Y., 1966, p. 79; F. Lavinia and H. Baldomir, *Instrumentos Juridicos para el Mantenimiento de la Paz en América*, Montevideo, 1979, p. 29; R. L. Cardón, *La Solución Pacifica de Controversias Internacionales en el Sistema Americano*, Buenos Aires, 1954, p. 76; H. M. Blackmer, *US Policy and the Inter-American Peace System*, Paris, 1952, p. 180; W. Sanders, *Bogotá Conference; Ninth International Conference of American States*, International Conciliation No. 442, June 1948, p. 403. And see Judge E. Jiménez de Aréchaga, cited para. 109, *supra*.)

CHAPTER 3

THE JURISDICTION OF THE COURT UNDER ARTICLE XXXI OF THE PACT IS NOT SUBJECT TO A CONDITION PRECEDENT OF EXHAUSTION OF THE CONCILIATION PROCESS

141. Although the Nicaraguan Application expressly founds the jurisdiction of the Court on Article XXXI of the Pact of Bogotá, Honduras contends that jurisdiction is defeated by the failure of the Parties to resort to conciliation. It contends that this is required by Article XXXII, which provides:

> "When the conciliation procedure previously established in the present Treaty or by agreement of the parties does not lead to a solution, and the said parties have not agreed upon an arbitral procedure, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of the said Statute."

142. The text of the relevant Articles, the history and preparatory work of the Bogota Conference and the writings of publicists combine to demonstrate that failure of the conciliation procedure is a required precondition only in cases coming to the Court by virtue of Article XXXII of the Pact, and not in those where the Court has compulsory jurisdiction *ipso facto* under Article XXXI with respect to the categories of questions enumerated in Article 36 (2) of the Statute.

A. Comparison of the Texts of Articles XXXI and XXXII Shows that They Are Separate and Independent Modes of Access to the Court, and Resort to the Court under Article XXXI Is Not Subject to a Precondition of Conciliation

143. The pattern of the Pact as to judicial settlement is established by the two provisions relating to the jurisdiction of the Court. Article XXXI deals with disputes "of a juridical nature" as numerated in the categories of Article 36 (2) of the Statute of the Court, which are recapitulated in the text of Article XXXI. Article XXXII of the Pact has no such limitation and covers all disputes of whatever character.

144. The Report of the United States delegation to the Conference confirms this understanding of the two Articles. It states that Article XXXII "is distinguished from the previous article by the fact that its scope is not limited to 'disputes of a juridical nature', but embraces all disputes". (United States Department of State, *Report of the US Delegation to the Ninth International Conference of American States*, p. 48 (1948).)

145. A second major element of the architecture of the Pact appears in Article III:

> "The order of pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should

> use all these procedures, or that any of them have preference over others except as expressly provided."

Every publicist and commentator on the Pact agrees that there is no required order of resort to the methods of peaceful settlement established by it. The obligation is only to use one or the other of them if the dispute cannot be settled by negotiations and diplomatic means. (E.g., F. P. Olave, *Derecho Internacional Público*, Lima, 1966, p. 305; F. V. García-Amador, *The Inter-American System*, Vol. 1, Part 2, OAS, Washington, D.C., 1983, p. 233; United States Department of State, *Report of the US Delegation to the Ninth International Conference of American States*, Washington, 1948, p. 44; H. M. Blackmer, *US Policy and the Inter-American Peace System*, Paris, 1952, p. 180; R. L. Cardón, *La Solución Pacífica de Controversias Internacionales en el Sistema Americano*, Buenos Aires, 1954, p. 75; A. F. Marchant, *La Conferencia de Chapultepec y su Importancia en el Sistema Interamericano: Conferencias de Chapultepec, Rio de Janeiro, y Bogotá*, Santiago, 1968, pp. 152-153; J. M. Yepes, *Del Congreso de Panamá a la Conferencia de Caracas, 1826-1954*, Caracas, 1955, p. 212; Inter-American Institute of International Legal Studies, *The Inter-American System*, Dobbs Ferry, N.Y., 1966, pp. 79-80.)

146. The requirement that resort to conciliation shall have failed is expressly provided in Article XXXII, and obviously governs disputes that fall within its provisions. But there is no requirement of prior conciliation in Article XXXI. It follows that in disputes falling within the categories listed in that Article and in Article 36 (2) of the Statute of the Court, a party may apply directly to the Court without first availing itself of the Procedure of Conciliation and Investigation established by Chapter Three of the Pact. In such cases, that procedure has no "preference over" the Judicial Procedure mandated in Article XXXI.

147. From these two elements — the breadth of Article XXXII and the principle of free choice among settlement methods — together with the principle already discussed of compulsory settlement of all controversies (see paras. 124-126, *supra*) the structure of the régime of judicial settlement contemplated by the Pact emerges. A party has two routes of access to the Court. It may invoke the Court's jurisdiction directly under the *ipso facto* clause of Article XXXI if the dispute falls within one of the enumerated categories. Or, whether or not the dispute is "legal", the aggrieved State may first resort to conciliation. By selecting this second option, the party does not forfeit the right to ultimate judicial determination of legal disputes. For if conciliation fails, recourse to the Court is open under Article XXXII. And, if the Court should decide that it is without jurisdiction because the dispute is not of a juridical character, Article XXXV gives the aggrieved party the right to go to binding arbitration under Chapter Five of the Pact[1].

148. To interpret Article XXXII in the manner proposed by Honduras de-

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[1] The United States believed that Article XXXII was too broad in that it might result in submission to the Court of questions beyond its competence to decide as a court of law. As a result, it entered a reservation at the time of signing the pact:

> "The United States does not undertake as the complainant State to submit to the International Court of Justice any controversy which is not considered to be properly within the jurisdiction of the court." (See *Report, supra*, at pp. 48-49.)

But as the Permanent Court observed,

> "The Court's jurisdiction depends on the will of the Parties. The Court is always competent once the latter have accepted its jurisdiction, since there is no dispute which

prives Article XXXI of any independent significance. The entire Article would be superfluous, since Article XXXII would cover all disputes, including those enumerated in Article XXXI. It is an elementary principle of the interpretation of treaties that they should be construed so as to give independent meaning to every provision.

B. The Work of the Inter-American Juridical Committee Both in Preparation for the Conference and in Subsequent Review of the Pact of Bogotá Supports the Textual Interpretation that Direct Resort to the Court Is Available under Article XXXI without the Necessity of Prior Conciliation

149. The history and provenance of the two Articles bears out the plain meaning of the texts. The Pact of Bogotá represents an evolution and integration of a number of treaties for pacific settlement of disputes theretofore in force among some or all of the American States. The most important of these were the General Convention of Inter-American Conciliation and the General Treaty of Inter-American Arbitration, both signed in Washington on 5 January 1929.

150. The immediate impetus for the Pact of Bogotá was a Resolution of the Conference on the Problems of War and Peace at Mexico City in 1943 requesting the Inter-American Juridical Committee to draft a project for an "Inter-American Peace System". The Committee produced a number of drafts, the most important of which, as noted above, were the 1945 and 1947 drafts.

151. At the Bogotá Conference there were two basic approaches to the design of a system of peaceful settlement. The first, supported by the United States and the Governing Board of the Pan American Union would have continued the basic structure of the two 1929 treaties on conciliation and arbitration. "Legal questions" would be subject to compulsory arbitration. Other disputes would be settled by methods chosen by the parties assisted in cases where they could not agree by consultations with the organs of the Organization of American States. The second approach, embodied in the Report of the Inter-American Juridical Committee, was described as a more "rigid" approach. It mandated the ultimate resolution of all controversies by adjudication or compulsory arbitration. This second approach was adopted by the Conference. Although the final text departs substantially from that of the earlier drafts, many of the principles in the Committee's projects are nevertheless incorporated in the Pact of Bogotá. (See, e.g., W. Sanders, *Bogota Conference: Ninth International Conference of American States*, International Conciliation No. 442, June 1948, p. 401; H. M. Blackmer, *US Policy and the Inter-American Peace System*, Paris, 1952, p. 180; C. G. Fenwick, "Remarks", in *The Results of Bogotá, Lecture Series on the Bogotá Conference held at the Pan American Union, May 24, 25 and 26, 1948*, p. 37.)

States entitled to appear before the Court cannot refer to it." (*Rights of Minorities in Upper Silesia (Minority Schools), P.C.I.J., Series A, No. 15*, p. 22 (1928). See also *South West Africa* cases, *I.C.J. Reports 1962*, p. 422; case concerning *Military and Paramilitary Activities in and against Nicaragua, Merits, I.C.J. Reports 1986*, p. 289 (Judge Schwebel, dissenting).)

In any case, the problem that concerned the United States was anticipated and is resolved by Article XXXV of the Pact.

The treaties integrated into the Pact of Bogotá are listed in Article LVIII, which provides that they shall cease to be in force between parties that have ratified the Pact.

152. The roots of the distinction between Article XXXI and Article XXXII are in the two 1929 treaties on arbitration and conciliation. The first provided for compulsory arbitration of juridical disputes; and the second for conciliation in disputes of any kind, including political controversies. The Inter-American Juridical Committee highlighted this distinction in its Report on the 1945 Draft of an Alternative Treaty:

> "In 1929, at the close of the Washington Conference, the plenipotentiaries of the American Governments signed the General Convention of Inter-American Conciliation and the General Treaty of Inter-American Arbitration. No attempt was made to coordinate the two procedures . . . *The arbitration procedure was made applicable to claims of right which were juridical in their nature, and the conciliation treaty extended to controversies of any kind.*" (*Ibid.*, at p. 89.)

That is, as between States parties, to these treaties, a State involved in a legal dispute with another could demand an arbitral settlement under the Arbitration Treaty. Or, whether or not the dispute was juridical in character, the complaining State could require the other to engage in conciliation under the Conciliation Convention.

153. This *modus operandi* of the earlier treaties is also recognized in the *Handbook for Delegates to the Ninth International Conference of American States* at Bogota. It states that the General Treaty of Inter-American Arbitration required the parties

> "to submit to that procedure all differences of an international character which may arise between them by virtue of a claim of right . . . and which are juridical in their nature by reason of being susceptible of decision by application of the principles of law . . . The subjects expressly included in the category of juridical questions are the same as those appearing in Art. 36 of the Statute of the International Court of Justice."

By contrast the General Convention of Inter-American Conciliation of 1929 "included among the differences susceptible of conciliation all differences of whatever nature" (*ibid.*, at p. 49).

154. The Committee left no doubt of its desire to continue the system of compulsory arbitration or judicial settlement without preconditions for legal disputes:

> "The Juridical Committee is of the opinion that the procedure of arbitration should be put in the foreground and that attention should be directed to it as the preferable method of settling disputes of a juridical character which it has not been possible to settle by negotiation. An alternative to the procedure for arbitration would be the procedure of judicial settlement in case the States in controversy were parties to a treaty providing for the judicial settlement of juridical disputes . . . At

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The report was issued before the establishment of the present Court. The Committee

> "believed it better to postpone the question of coordination of inter-American procedures with procedures before the Permanent Court until the reorganization of the Court at the close of the War" (*Report*, at p. 97).

But it noted that

> "nineteen American States are now members of the Permanent Court of International Justice at The Hague. Provision is accordingly made that juridical disputes may, as an alternative [to arbitration], be submitted to either procedure." (*Ibid.*)

> the same time, while arbitration and judicial settlement are recognized by the Committee as being in principle the proper procedures for the settlement of juridical disputes, it would seem unreasonable to deny to the parties the right to have recourse to the procedure of conciliation for the settlement of such disputes if they are in accord in preferring that more elastic procedure." (*Report of the Inter-American Juridical Committee on the 1945 Draft of an Alternative Treaty*, p. 89; see also the discussion of Article **XVIII** of the 1947 draft, paras. 134-136, *supra*.)

Compulsory arbitration (or in the alternative judicial settlement) was thus the preferred procedure for disputes of a juridical character, although of course the possibility of voluntary resort to conciliation was left open.

155. On the other hand, the 1945 draftsmen intended that parties to other kinds of disputes would also be compelled to submit to some form of settlement procedure:

> "The principle on which the Alternative Draft proceeds is that all disputes which the parties are unable to settle between themselves ... must be submitted to one or other of the two formal procedures, arbitration being the procedure appropriate to juridical disputes. But failing resort by the parties to arbitration on the ground of the non-juridical character of the dispute, the procedure of investigation and conciliation becomes obligatory without exceptions or qualifications." (*Ibid.*, at p. 94.)

156. In the 1945 draft, however, this procedure of investigation and conciliation would not eventuate in a determination binding on the parties. The next step was taken in the 1947 draft — a categorical obligation to accept binding determination in all types of disputes. Article **XVII** provided:

> "The High Contracting Parties bind themselves to submit to arbitration controversies of any nature, juridical or non-juridical, which have arisen or may arise in the future between them ..."

157. Articles **XXXI** and **XXXII** of the Pact of Bogotá represent the culmination of this evolution. Compulsory jurisdiction of the Court for juridical disputes under Article **XXXI**, without the interposition of any other procedure, is simply an adaptation of the regime of compulsory adjudication already in effect for such disputes under the General Treaty on Arbitration. By that Treaty, the parties were already obligated to resort to binding arbitration of disputes enumerated in Article 36 (2) of the Statute of the Court, unless the aggrieved party voluntarily chose to pursue the conciliation process. By 1948, the uncertainty as to the organization of the Court that made the framers of the 1945 draft hesitate (see para. 154, footnote 1, *supra*), was resolved. Accordingly the Conference was prepared to opt for compulsory jurisdiction *ipso facto* in the four categories of disputes.

158. For other disputes, however, no previous treaty had obligated parties to submit to procedures that would result in a binding decision. Article **XXXII** was thus a major departure from pre-existing practice not only among

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[1] The report recognized that under the earlier treaties the parties might have recourse to conciliation on a voluntary basis before submitting to arbitration if they so desire. But such recourse was not compulsory. The Arbitration Treaty stated only that it "did not preclude the parties, before resorting to arbitration, from having recourse to the procedure of conciliation and investigation" (*Report*, at p. 89).

American States but throughout the international community. It was regarded by commentators as the most important achievement of the Conference in the field of pacific settlement. (See, e.g., A. v. W. Thomas and A. J. Thomas, Jr., *The Organization of American States*, Dallas, 1963, p. 290; Inter-American Institute of International Legal Studies, *The Inter-American System, Its Development and Strengthening*, Dobbs Ferry, N.Y., 1966, pp. 78-79; F. Lavina and H. Baldomir, *Instrumentos Juridicos para el Mantenimiento de la Paz en America*, Montevideo, 1979, p. 29; R. L. Cardón, *La Solucion Pacifica de Controversias Internacionales en el Sistema Americano*, Buenos Aires, 1954, p. 75; H. M. Blackmer, *U.S. Policy and the Inter-American Peace System*, Paris, 1952, p. 182.) In line with the position first adumbrated in Article XVII of the 1947 draft, Article XXXII added a stage in which the aggrieved party could obtain binding settlement of any dispute, legal or otherwise, if resort to conciliation (particularly appropriate for non-juridical disputes) should fail.

159. Retrospectively in 1985, the Inter-American Juridical Committee reiterated the distinction between Article XXXI and Article XXXII of the Pact that it had defined prospectively in the preparatory work. At the request of the Permanent Council of the OAS, the Committee made a study looking toward amendments to the Pact. Opinion of the Inter-American Juridical Committee on the American Treaty on Pacific Settlement (Pact of Bogota), OEA/Ser.G, CP/doc.1603/85, 3 September 1985 (hereafter "the Opinion") (Ann. 23).

160. The study was the result of long-standing dissatisfaction among the members of the Organization of American States with the operation of the Pact of Bogota. It addressed the question why the parties had not resorted more often to the procedures mandated in the Pact and why a number of American States had failed to ratify it. The Committee was charged with a comprehensive review of the operation of these procedures with a view to recommending amendments to improve the operation of the Pact. As it turned out, no amendments were adopted, but the preparatory opinion of the Committee and the report of its Rapporteur illuminate the meaning and operation of the judicial settlement provisions here in issue.

161. The Committee was chaired by Dr. Galo Leoro F. of Brazil, who was also the Rapporteur. In the Committee's view, the "automatic" feature of the Pact — the requirement of ultimate submission of all disputes whether legal or not to binding third-party determination — was the major impediment to fuller use of the procedures of the Pact. The Opinion emphasizes that either party is entitled to invoke the conciliation procedure described in the Pact, and in such a case:

> "[i]f the [Conciliation] Commission's efforts are unable to produce a solution, this entitles either of the parties, if they have not agreed upon an arbitral procedure, to have recourse to the International Court of Justice. In this case, the Court shall have compulsory jurisdiction, in accordance with Article 36, paragraph 1, of its Statute. (Article XXXII.)" (Opinion, at p. 429, *infra*.)

But judicial settlement may also be available without regard to any attempt at conciliation:

> "In any event, recourse to the International Court of Justice is available to the parties inasmuch as they declare that they recognize the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the Treaty may be in effect, in all

> disputes of a juridical nature that are specified in the text of the Pact itself." (Opinion, at p. 429, *infra*.)

162. The Rapporteur's report on which the Committee's Opinion is based makes even more explicit the two alternatives or, as he calls them "options" that an aggrieved party has for reaching the Court.

> "The Pact has had to make allowance for a situation whereby if a State Party wishes to invoke a given procedure . . . it may do so. If the controversy in question is of a juridical nature, it does this by recourse to the International Court of Justice, in which case jurisdiction is compulsory *ipso facto* for the parties (Article XXXI). If the controversy is of any other nature, the State may invoke the Pact by means of recourse to conciliation, in which case it has the right to request that the Permanent Council convoke the Commission of Investigation and Conciliation . . .
>
> By not making it binding upon the parties to resort to any given procedure, the Pact provides an option whereby if one of them wishes to use conciliation, that party may unilaterally request of the Permanent Council, the organ that is empowered to convoke the Commission of Investigation and Conciliation (Article XVI), that it do so . . .
>
> The other option the Pact provides is that if a party decides to go to the International Court of Justice . . . to settle any controversy of a legal nature, it will then have the compulsory jurisdiction, *ipso facto*, of that Court in respect of the other party (Article XXXI).
>
> This direct recourse to the International Court of Justice, which comes about when a Party voluntarily brings the matter to that court of international jurisdiction, is entirely different from the recourse that a party has by law as a result of the automatic element of the Pact. In the latter case, jurisdiction is not based on Article XXXI, but rather Article XXXII, which provides that if conciliation leads to no solution, either party *shall be entitled* to have recourse to the International Court of Justice, which shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of its Statute.
>
> In the Pact of Bogotá, provision has been made for the fact that the Court has: *(a)* compulsory jurisdiction for the controversies of a juridical nature as listed in Article XXXI, which it recognizes; and *(b)* compulsory jurisdiction for any controversy that comes to it as a result of unsuccessful conciliation . . ." (Pp. 467-468, *infra*.)

C. The Weight of the Teachings of the Most Highly Qualified Publicists of the Inter-American System Supports the Position that Exhaustion of the Conciliation Procedure Is Not a Precondition to Resort to the Court under Article XXXI of the Pact

163. Although there is some support in the writings of publicists for the position advanced by Honduras, particularly in very brief summary references to the Pact of Bogotá, and some of the publicists are not as clear as one would like, the weight of well-considered opinion takes the view that the failure of conciliation is not a precondition to the jurisdiction of the Court to entertain disputes of a juridical nature under Article XXXI of the Pact.

1. Publicists Not Cited in the Memorial of Honduras

164. Professor José J. Caicedo Castilla, a Vice Chairman of the Inter-American Juridical Committee, states unequivocally that the Pact provides two separate modes of access to the Court, one of which, Article XXXI, has no precondition of conciliation. In his authoritative work, *El Derecho Internacional en el Sistema Interamericano* (Madrid, 1970), he says:

> "The Pact attributes, in general, cognizance of the controversies among the American States to the International Court of Justice, and, in defect of that, organizes an arbitral system such that the Court will take cognizance of:
>
> (1) controversies of a juridical character, such as those enumerated by Art. 36 of the Statute of the Court;
>
> (2) non juridical controversies with respect to which the parties have not arrived at a solution in the conciliation procedure and have not agreed to resolve them by means of arbitration. *As a consequence, in this second case there is a restriction: the parties or one of them cannot recur directly to the court, but rather are obligated to commit themselves first to the conciliation procedure.* Only after the failure of this procedure does the court acquire competence, and besides that the parties should prove that they did not agree to submit their differences to arbitration."[417] (*Ibid.*, at p. 374 (emphasis added). See also J. J. Caicedo Castilla, *El Panamericanismo*, Buenos Aires, 1961, p. 259.)

Castilla talks of "este segundo caso" as comprising "controversias no jurídicas", because those are the only ones as to which direct resort to the Court under Article XXXI is, by definition, unavailable. It is clear, however, as suggested by the 1945 draftsmen and Dr. Leoro, as well as by the express provisions of Article III, that if an aggrieved State chose to do so, it could *elect* to use the conciliation procedure of Chapter Three for a dispute that concerned a juridical issue as well. The party making such an election would not forego its right to judicial settlement, for if conciliation failed to "lead to a solution" access to the Court would be available under Article XXXII.

165. F. Lavinia and H. Baldomir, in *Instrumentos Jurídicos para el Mantenimiento de la Paz en America* (Montevideo, 1979) adopt the same analysis. Judicial settlement is "the principal mechanism of the system of pacific settlement relying for its effectiveness on a judicial body with universal and virtually obligatory competence".

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[417] "El Pacto atribuye en general el conocimiento de las controversias entre los Estados americanos a la Corte Internacional de Justicia, y en defecto de esta organiza un sistema arbitral.

De modo que la Corte conocerá:

1) de las controversias de carácter jurídico, tal como las enumera el art. 36 del Estatuto de la Corte;

2) de las controversias no jurídicas respecto de las cuales las partes no hayan llegado a una solución en el procedimiento de conciliación y no hayan concordado en solucionarlas por medio del arbitraje. *Por consiguiente, en este segundo caso hay una restricción: no pueden las partes o una de ellas acudir directamente a la Corte sino que están obligadas a someterse previamente al procedimiento de conciliación.* Solo por el fracaso de este procedimiento adquiere competencia la Corte, y además de eso las partes deben comprobar que no concordaron en someter la diferencia a arbitraje."

166. Thus, the Court may entertain:

> "(A) *In matters of a juridical character*
>
> In cases where the parties are unable to agree to resolve the controversy through the methods previously studied, the Pact establishes an obligatory judicial determination as the method for the solution of conflicts of a juridical character before the International Court of Justice and in accordance with its statutes.
>
> Article **XXXI** says that the contracting parties recognize the jurisdiction of the International Court of Justice as obligatory *ipso jure*, in respect to every other American State while the Pact remains in force, without the necessity of any special convention, in all controversies of a juridical character that may rise between them [of the four categories listed in Article 36 (2) of the Statute of the Court].
>
> (B) *In matters of a non-juridical character*
>
> When the controversy is of a non-juridical type, the parties or one of them cannot go directly to the Court, but are obligated first to use the method of conciliation. Only when the resort to conciliation does not lead to a result and they do not agree to resolve the matter by means of arbitration, can either of the parties resort to the International Court of Justice." (*Ibid.*, at pp. 29-30.)

Again, it is only in those cases where the aggrieved party "cannot go directly to the Court" that it must necessarily resort first to the conciliation procedure. In cases involving questions of a juridical character, direct access to the Court is open without preconditions by virtue of Article **XXXI**.

167. Professor Raúl Luis Cardon, in *La Solución Pacífica de Controversias Internacionales en el Sistema Americano* (Buenos Aires, 1954), also distinguishes the two routes of access to the Court. He describes Article **XXXII** as "one of the most important clauses of the Pact of Bogotá" because it is the "maquinaria automática" that ultimately ensures a binding judicial or arbitral determination of the controversy. (*Ibid.*, at p. 75.)

> "In principle, this leaves complete liberty to the parties to recur to the procedure that they consider most appropriate to resolve their controversy — but as regards the recurring to conciliation — by initial

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"A) *En asuntos de carácter jurídico*

En caso de que las partes no se pongan de acuerdo en resolver la controversia por los medios pacíficos anteriormente estudiados, el Pacto establece el arreglo judicial obligatorio como método para la solución de los conflictos de carácter jurídico a través de la Corte Internacional de Justicia y de acuerdo con sus estatutos.

El Artículo **XXXI** dice que las partes contratantes reconocen, respecto a cualquier otro Estado americano, como obligatorio ipso jure, sin necesidad de ninguna convención especial mientras esté vigente este Pacto, la jurisdicción de la Corte Internacional de Justicia en todas las controversias de orden jurídico que surjan entre ellas y que versen sobre: [a list of the four categories in Article 36 (2) of the Statute of the Court follows].

B) *En asunto de carácter no jurídico*

Cuando la controversia es de tipo no jurídico, las partes o una de ellas no puede acudir directamente a la Corte, sino que están obligadas a utilizar previamente el método de la conciliación. Sólo cuando en el transcurso de la conciliación no se logra un arreglo y tampoco se ponen de acuerdo en resolver el asunto por la vía del arbitraje, cualquiera de las partes podrá recurrir a la Corte Internacional de Justicia."

> agreement of the parties or by diplomatic means having failed — the 'automatic machinery' can be put into movement by only one of the parties to compel judicial or arbitral settlement." (*Ibid.*)[1]

168. A party who invokes conciliation is subject to the "automatic mechanism" of compulsory judicial or arbitral jurisdiction if the effort should fail. But, Cardon continues:

> "Nor is this the only way in which the Pact has given an obligatory character to the jurisdiction of the Court. This is also envisioned in Article 31, according to which the High Contracting Parties have declared that they recognize as obligatory *ipso facto*, without the need for a special agreement, while the Pact remains in force, with respect to any other American State, the jurisdiction of the International Court of Justice, in accordance with paragraph 2 of Article 36 of its Statute in all controversies of a juridical order arising between them [under the four headings of Article 36 (2)]." (*Ibid.*, at pp. 75-76.)[2]

Direct recourse to the Court is open for juridical disputes under Article XXXI.

169. Dr. Leoro, the 1985 Chairman and Rapporteur of the Inter-American Juridical Committee, takes the same position in a much earlier article, "El Pacto de Bogota, Los Demas Instrumentos Inter-Americanos, La Carta de las Naciones Unidas y la Solucion Pacifica de las Controversias", 4 *Revista Ecuatoriana de Derecho Internacional*, No. 4/5, p. 36 (1968-1969). Dr. Leoro describes the Pact's tripartite structure of binding settlement procedures as similar to sources cited in paragraph 158, *supra*:

> "The innovations of the Pact, in virtue of which this inter-American instrument has been applauded so much, consist really in the acceptance as obligatory, '*ipso facto*', of the jurisdiction of the International Court of Justice for the controversies of 'a juridical order' (Art. XXXI); the recognition of recourse before the same Court when the conciliation procedure has failed and arbitration has not been agreed upon; (Art. XXXII); and the obligatory submission to arbitration when the court declares itself incompetent . . ." (*Ibid.*, at p. 39.)[3]

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[1] "En principio, este deja entera libertad a las partes para recurrir al procedimiento que consideren más apropiado para resolver su controversia . . . Pero en cuanto se recurre a la conciliación — por acuerdo inicial de las partes o por haber fracasado los medios diplomáticos — la 'maquinaria automática' puede ser puesta en movimiento por una sola de las partes para compeler al arreglo judicial o arbitral."

[2] "No es ese el único caso en que el Pacto ha dado carácter obligatorio a la jurisdicción de la Corte. Esta además previsto por el artículo 31, según el cual las Altas Partes contratantes han declarado que reconocen como obligatorio *ipso facto*, sin necessidad de ningún convenio especial, mientras esté vigente el presente Tratado, y respecto a cualquier otro Estado americano, la jurisdicción de la Corte Internacional de Justicia, de conformidad con el inciso 20 del artículo 36 de su Estatuto, en todas controversias de orden jurídico que surjan entre ellas . . ."

[3] "Las innovaciones del Pacto, en virtud de las cuales se ha aplaudido tanto a este instrumento interamericano, consisten realmente en la aceptación como obligatoria, 'ipso facto', de la jurisdicción de la Corte Internacional de Justicia para las controversias de 'orden jurídico' (Art. XXXI); el reconocimiento del recurso ante la misma Corte cuando haya fracasado el procedimiento de conciliación y no se haya convenido en un compromiso de arbitraje; (Art. XXXII); y el sometimiento obligatorio al arbitraje cuando la Corte se declare incompetente . . ."

The obligation of Article XXXI is presented as independent of Article XXXII and not conditioned on the failure of the conciliation procedure. Later the author reverts to this point, distinguishing between and discussing separately the origins of the Pact Articles in the pre-existing procedures for conciliation and arbitration.

170. Under the heading "*La conciliación*" he points out that the procedure envisioned in the General Inter-American Convention on Conciliation is taken into the Pact of Bogotá. But something new has been added:

> "The recognization that if this method fails without arriving at any solution and the parties have not agreed on an arbitral procedure, any of them will have the right to recur to the International Court of Justice in the form established by Article 40 of its Statute. The jurisdiction of the Court will remain obligatorily open in conformity with the first subparagraph of Article 36 of the same Statute (Art. XXXII)." (*Ibid.*, at pp. 57-58 (emphasis in original).)

As discussed above, recourse to the Court is a final step after the conciliation procedure formerly available under the 1929 Treaty, providing a way for either of the parties to obtain a binding result if that procedure fails. Rather than conciliation being a necessary precondition of recourse to the Court, adjudication becomes the capstone of the conciliation process.

171. Under the heading of "*El arbitraje*", he notes the obligation of parties to the General Inter-American Treaty on Arbitration to submit to binding arbitration differences of a juridical nature that are susceptible of decision through the application of principles of law.

> "The arbitration, therefore, in this treaty, is a method of solution *applicable to all the controversies of a juridical order*, the same that in the Pact of Bogotá, with equal limitations as those contained in this treaty, are found submitted, on the other hand, *to the obligatory jurisdiction of the International Court of Justice* (Art. XXXI)." (*Ibid.*, at p. 58 (emphasis in original).)

172. In Article XXXI cases, as under the 1929 General Treaty, direct recourse to binding settlement, without prior conciliation, is available.

173. Article XXXI and Article XXXII are thus alternative modes of access to the Court. Article XXXI takes the place of the pre-existing obligatory resort to arbitration for juridical questions (though of course, voluntary recourse to conciliation was possible in such cases if the complaining party so desired). Article XXXII replaces the pre-existing procedure of conciliation for other questions, but adds as a final step if conciliation fails compulsory adjudication, either by Court or arbitrator. (*Ibid.*, at pp. 57-58.)

174. F. Fernandez-Shaw, in *La Organización de los Estados Americanos* (Madrid, 1963), after describing the contents and separate functions of Articles XXXII and Article XXXI, concludes:

"[E]l reconocimiento de que si este método fallara sin que se llegue a ninguna solución y las partes no hubiesen convenido a un procedimiento arbitral, cualesquiera de ellas tendrá derecho a recurrir a la Corte Internacional de Justicia en la forma establecida en el Artículo 40 de su Estatuto. La jurisdicción de la Corte quedará obligatoriamente abierta conforme al inciso lo del Artículo 36 del mismo Estatuto (Art. XXXII)."

"El arbitraje [he says] por lo tanto, en este convenio, es método de solución *aplicable a todas las controversias de orden jurídico*, las mismas que en el Pacto de Bogotá con iguales limitaciones que las contenidas en este Tratado, se hallan sometidas, en cambio, *a la jurisdicción obligatoria de la Corte Internacional de Justicia* (Art. XXXI)."

> "Thus, the Court can entertain controversies of a juridical type under Article XXXI and non-juridical controversies when the parties have tried *(agotado)* the method of conciliation and do not have an agreement to arbitrate." (*Ibid.*, at p. 411.)[1]

As with the other commentators, the *requirement* that the parties first use the method of conciliation (as opposed to the possibility of voluntary conciliation) is applicable only to *"las controversias de tipo no juridico"* not covered by Article XXXI.

175. Finally, Dr. Alberto Herrarte, former Foreign Minister of Guatemala and Vice Chairman of the Inter-American Juridical Committee, said in his lecture on *Solucion Pacifica de las Controversias en el Sistema Interamericano* in the Sixth Course in International Law Organized for the Inter-American Juridical Committee in 1979:

> "The most important provisions of the Pact are in Article XXXI, which declares as obligatory *ipso facto* the jurisdiction of the Court in controversies of a juridical order to which subparagraph 2 of Article 36 of the Statute of the Court refers. This is: the American States by the Pact are making the declaration to which that subparagraph refers, in order to make obligatory *ipso facto* and without necessity of a special agreement, the jurisdiction of the Court in controversies of a juridical order that specifically are mentioned.
>
> In conformity with Article XXXII, the jurisdiction of the Court also remains obligatory for the other matters in which the conciliation procedure did not arrive at a solution and the parties had not agreed on an arbitral procedure. In that case, any of them can recur to the Court, relying upon the case indicated in the first subparagraph of our Article 36 of the already mentioned Statute, this is when the parties submit voluntarily matters to the Court." (Secretario General, Organizacion de los Estados Americanos, *Sexto Curso de Derecho Internacional Organizado por el Comite Juridico Interamericano*, OEA/Ser.Q/V.C-6, CJI-40, at 225.)[2]

176. According to Herrarte, the Parties, in Article XXXI, have *inter se* made the declaration referred to in Article 36 (2) as to the classes of questions mentioned in that paragraph. Article XXXII, on the other hand, covers "los otros

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[1] The original Spanish text:

> "Asi, pués, la Corte conocerá de las controversias de tipo juridico segun el articulo XXXI y de las controversias de tipo no juridico, cuando las partes hayan agotado el método de la conciliación y no se hayan puesto de acuerdo sobre si es procedente el método del arbitraje."

[2] "Las provisiones mas importantes del Pacto están en el Articulo XXXI, cuando declara como obligatorio *ipso facto* la jurisdicción de la Corte en las controversias de orden juridico a que se refiere el inciso 20 del articulo 36 del Estatuto de la Corte. Esto es, los Estados Americanos por el Pacto estan haciendo la declaracion a que se refiere dicho inciso, para hacer obligatoria *ipso facto* y sin necesidad de convenio especial, la jurisdiccion de la Corte en las controversias de orden juridico que especificamente se mencionan.

Conforme al articulo XXXII, la jurisdicción de la Corte tambien queda obligatoria para los otros asuntos en los cuales el procedimiento de conciliación no llegara a una solución y las Partes no hubiesen convenido a un procedimiento arbitral. En ese caso, cualquiera de ellas puede recurrir a la Corte, homologándose el caso senalado en el inciso 10 del articulo 36 del ya citado Estatuto, ésto es cuando las Partes someten voluntariamente los asuntos a la Corte."

asuntos" and it is only with respect to them that the requirement of prior conciliation is imposed.

2. *Publicists Cited in the Memorial of Honduras*

177. Respondent, at pages 65-71, *supra*, of its Memorial, presents the opinions of a number of publicists in support of its position that an effort at conciliation is a necessary prerequisite to recourse to the Court under Article XXXI as well as under Article XXXII, where the requirement expressly appears. Although some of these do support this view, others are misconstrued in the Memorial or treat the matter only in brief and summary fashion without extensive consideration or analysis of the text of the Articles. Moreover, only one is a Latin American jurist working in the tradition of inter-American law.

W. Sanders, *The Bogota Conference: Ninth International Conference of American States*, International Conciliation No. 442, June 1948, cited in the Memorial, p. 67, *supra*.

178. A careful reading of Mr. Sanders shows that his position is not necessarily inconsistent with Nicaragua's. His more detailed description of the judicial settlement Articles seems to make precisely the distinction Nicaragua now maintains:

> "In the chapter on judicial procedure, the parties recognize the jurisdiction of the International Court of Justice as compulsory *ipso facto in all disputes of a juridical nature*, in conformity with Article 36, paragraph 2, of the Statute of the Court.
>
> Moreover, when conciliation procedures have not led to a solution and the parties have not been able to agree upon an arbitral procedure, any one of them can refer *any dispute* [as distinguished from disputes of a juridical nature] to the International Court of Justice under Article 40 of the Statute.
>
> The net result of these interlocking procedures is the following: *The parties are not required to resort in the first instance to any particular procedure of those set out in the Treaty* . . . They may have recourse to the International Court of Justice or set up an arbitral tribunal, *even in non-legal questions*, rather than refer the matter to mediation or conciliation. However, if conciliation is tried and fails and the parties cannot agree on arbitration, any one of them can force a reference to the Court." (*Op. cit.*, pp. 403-404 (emphasis supplied).)

The discussion of conciliation *is in connection with the settlement of "non-legal questions" falling under Article XXXII*. Resort to conciliation is a way by which a party can "force a reference to the Court" for the resolution of such non-legal questions'[1]. For legal questions, which fall under the *ipso facto* provisions of Article XXXI, however, the parties have accepted the compulsory jurisdiction of the Court in conformity with Article 36 (2) of its Statute. Mr. Sanders's fuller treatment is thus consistent with the position that conciliation is not a precondition of jurisdiction under Article XXXI.

L. Delbez, "L'évolution des idées en matière de réglement pacifique des conflits", 55 *Revue générale de droit international public* 5 (1951), cited in the Memorial, p. 67, *supra*.

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[1] To be sure, the Court might not consider it had jurisdiction in such a case, but in that event compulsory arbitration is available under Article XXXV.

179. Professor Delbez's comments occupy less than a page in a long article devoted to other agreements and forums. His basic assumption is that, despite Article III, the settlement process should "normally" follow a prescribed sequence of modalities, from "good offices and mediation" through "investigation and conciliation" to "proceedings before the I.C.J." (*op. cit.*, p. 21). This assumption, as the Honduran Memorial itself notes (Memorial, p. 67, footnote 1, *supra*), is incorrect. Article III expressly stipulates that there is no preferential order among the dispute settlement methods prescribed and that the parties are entirely free to choose any one of them, unless expressly provided otherwise. This freedom of choice is an essential feature of the Pact. (See authorities cited in paragraph 145, *supra*.)

180. Professor Delbez's conclusion cannot be divorced from his erroneous assumption. Of course, if the Pact did indeed provide for a hierarchically ranked sequence of methods, those higher in the sequence could not be employed before lesser ones were exhausted. It would follow, as Professor Delbez concludes, that conciliation is a precondition to adjudication. But if the treaty expressly rejects such a hierarchy, then there can be no requirement that one method should be pursued before another, unless the instrument specifically so provides. It is an indication of the deficiency in Professor Delbez's line of analysis that he does not even cite Article XXXI. The conclusion is unfortunately inescapable that Professor Delbez did not fully grasp the scheme of the Pact.

A. v. W. Thomas and A. J. Thomas, Jr., *The Organization of American States*, Dallas, 1963, cited in the Memorial, p. 66, *supra*.

181. The quotation in the Memorial from the cited work is correct. However, the bulk of the authors' ensuing discussion and analysis is an effort to discredit what they call

> "the dubious distinction between legal, justiciable, or juridical disputes on the one hand and non justiciable, non juridical, non legal, or political disputes on the other" (*op. cit.*, p. 291).

Like it or not, the difference between the procedures contemplated in Article XXXI and Article XXXII of the Pact of Bogotá reflects that distinction. If the authors are unwilling to recognize the distinction *ab initio*, they surely will be unable to appreciate the potential differences between the two categories that would lead to the requirement of previous conciliation for one and not for the other.

R.-J. Dupuy, *Le nouveau panaméricanisme*, Paris, 1956, cited in the Memorial, p. 68, *supra*; G. Connell-Smith, *The Inter-American System*, London, 1966, cited in the Memorial, p. 69, *supra*; H. von Mangholdt, *Arbitration and Conciliation in Judicial Settlement of International Disputes, A Symposium*, Max Planck Institute of Comparative Public International Law, cited in the Memorial, p. 70, *supra*.

182. Each of these works has a single conclusory sentence, quoted in the Memorial, asserting without analysis or citation of authority that conciliation is a precondition of resort to the Court under the Pact. In the circumstances, they must be regarded as derivative rather than the well-considered independent views of individual publicists.

183. Of all the authors cited in the Memorial, therefore, only Garcia-Amador presents an extended analysis in support of the Honduran position.

Conclusion

184. Nicaragua makes the following submissions with respect to the jurisdiction of the Court under the Pact of Bogotá:

(i) The acceptance of the jurisdiction of the Court under Article XXXI, "*ipso facto* and without the necessity of any special agreement" is a treaty obligation binding on the parties falling within the terms of Article 36 (1) of the Statute of the Court as a "matter[] specially provided for . . . in treaties or conventions in force".

(ii) The acceptance of jurisdiction under Article XXXI of the Pact of Bogotá is not and cannot be qualified by the purported "reservation" or "new declaration" of Honduras dated 22 May 1986.

(iii) The jurisdiction of the Court over this case, which the parties accepted "*ipso facto*, without the necessity of any special agreement" under Article XXXI, is not subject to a prior condition that the conciliation process established by the Pact shall have failed to provide a solution.

CHAPTER 4

ARTICLES II AND IV OF THE PACT OF BOGOTÁ DO NOT CONSTITUTE A BAR TO THE COURT'S JURISDICTION IN THE PRESENT DISPUTE

185. Honduras argues that the mutual submission to the Court's jurisdiction based on the Pact of Bogotá is negated, in the circumstances of the present case, by Articles II and IV of the Pact.

Article II states that:

> "in the event that a controversy arises between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles, or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution."

And Article IV provides:

> "[O]nce any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded."

186. Honduras purports to find in this language two separate bases for negating the exercise of jurisdiction by the Court in this case. First, Honduras argues that the obligation undertaken by the contracting parties to use the procedures established in the Pact, including recourse to the Court, is subject to the condition precedent that "in the opinion of the parties" — which Honduras reads as "in the opinion of *both* parties" — the dispute cannot be settled by direct negotiations through the usual diplomatic channels. Honduras contends that merely by expressing the opinion that its dispute with Nicaragua *can* be settled by direct negotiations, it can prevent the jurisdiction of the Court from attaching. Indeed, it can prevent recourse to any of the procedures for peaceful settlement defined in the Pact.

187. Second, Honduras argues that the Contadora process, in which both Nicaragua and Honduras have been participating constitutes a "special procedure" under Article II that "in their opinion" — which Honduras reads as "in the opinion of *one* of them" — "will permit them to arrive at a solution". Honduras contends that by virtue of Article IV, as long as the Contadora process continues neither these parties (nor it would seem, any other Central American States participating in Contadora) can invoke any of the pacific procedures of the Pact, including the procedure of judicial settlement, to deal with bilateral issues between them that might be said to be within the purview of Contadora.

188. Neither of these positions can be seriously maintained. As will be shown, to accept either would be to frustrate the central purpose of the Pact — "the ultimate purpose of rendering compulsory, and as it were irreversible, the recourse to" binding modes of resolving *all* disputes between parties.

A. Article II Does Not Condition Recourse to the Court under Article XXXI upon Agreement by All Parties that a Dispute Cannot Be Settled by Direct Negotiations

189. Honduras acknowledges that "it is in effect Articles XXXI to XXXV that hold the system in place and guarantee, in principle, that a peaceful solution is inevitable" (Memorial, at p. 64, *supra*). They do so by providing some form of binding third-party settlement of all types of controversies that might arise between parties to the Pact: direct recourse to the Court for disputes of a juridical character enumerated in Article 36 (2) of the Statute (Art. XXXI); recourse to the Court after an attempt at conciliation for all controversies (Art. XXXII); and arbitration if it should appear that the Court "declares itself to be without jurisdiction" (Art. XXXV, subject to certain limited exceptions). This whole carefully constructed scheme of compulsory jurisdiction would be shattered if, as Honduras contends, a party could veto resort to these modes of settlement simply by saying that in its opinion the dispute can be settled by direct negotiation between the parties. Of what value is a binding acceptance of the compulsory jurisdiction of the Court, either directly under Article XXXI or after conciliation under Article XXXII, if the parties retain the unrestricted right to accept or reject the Court's jurisdiction in any particular case merely by uttering such an opinion?

190. Yet that would be precisely the effect of Honduras's interpretation of Article II. According to Honduras, any contracting party may escape its commitments under Chapters Four and Five of the Pact with respect to any particular dispute merely by stating that, in its opinion, the dispute can be settled by direct negotiations. The mere expression of the opinion is binding on the Court since the question of whether the dispute can be settled by direct negotiations is "not for objective evaluation by the Court". (Memorial, at p. 42, *supra*.)

191. As demonstrated in the two preceding chapters, and as admitted by Honduras, the fundamental purpose of the Pact of Bogotá was to establish a comprehensive and compulsory system for the peaceful resolution of disputes between the American States. The objective was to obligate the contracting parties to submit all controversies that could not be settled by normal diplomatic means to binding procedures of dispute resolution, primarily adjudication by the International Court of Justice. This central purpose would be completely frustrated if Honduras's interpretation of Article II were to prevail. Under that interpretation, any State wishing to avoid adjudication — or any other dispute resolution procedure set forth in the Pact — could do so merely by stating, however erroneously or disingenuously, that in its opinion the dispute can be resolved by negotiations. It is axiomatic that the Court must resist adopting a proffered interpretation of treaty language that frustrates the entire purpose of the treaty.

192. Honduras's interpretation contradicts the language of the Pact as well as its purpose. In the first place, as shown in Chapter 3 above, the language of Article XXXI is unequivocal and unconditional. The obligations undertaken in that Article are not expressed as a subject to any conditions precedent. On the contrary, acceptance of jurisdiction "*ipso facto, without the necessity of any special agreement*" (emphasis added) negates a requirement that each party to a dispute agree that it cannot be settled by negotiation.

193. Article II itself states only that in the event of a controversy "which, in the opinion of the parties, cannot be settled by direct negotiations . . . the parties bind themselves to use the procedures established in the present Treaty . . .". It does not necessarily follow that such recourse is available *only*

when it is the opinion of the parties that the dispute cannot be settled by direct negotiations. It is perfectly logical (and much more consistent with the purpose of the Pact) to read Article II as setting forth one circumstance — but not the exclusive one — in which the parties bind themselves to use the procedures set forth in the Pact, namely when they are of the opinion that their dispute cannot be settled by direct negotiations. Under this reasoning, Article IV sets forth other circumstances in which the parties are bound to use one of the specific procedures set forth in the Pact. Because Article XXXI is unconditional, it applies regardless of the opinion of the parties as to whether the dispute can be settled by negotiations.

194. The true construction of the words "in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels . . ." (and the only interpretation consistent with the central purpose of the Pact) is that the parties to a dispute are bound to use the procedures in the Pact whenever one of them believes that it cannot be settled by diplomacy. This reading is confirmed by the peaceful settlement provisions of the Charter of the Organization of American States, concluded at the same Bogota Conference, which were the foundation of the Pact of Bogota. As has already been pointed out (*supra*, para. 126), Article 23 of the Charter (now Article 25) imposed a binding obligation on the members of the Organization to agree to a peaceful procedure for the settlement of any dispute "which, in the opinion of one of them, cannot be settled through the usual diplomatic channels . . .". Article 24 (now Article 26) mandated "[a] special treaty" to establish procedures and means for their application "so that no dispute between American States shall fail of definitive settlement *within a reasonable period*" (emphasis added). These Articles are addressed to the same problem as Article II of the Pact, and it should be read in *pari materia* with Article 23 of the superordinate Charter. In particular, the reference in the Charter to the necessity of settlement within a reasonable period precludes the proposed Honduran construction, which would give any party to a dispute the means of preventing settlement indefinitely.

195. The Court itself has frequently construed clauses in compromissory agreements requiring prior resort to diplomatic negotiations. It has held that the intention of the parties in accepting such clauses is clearly to provide for such a right of unilateral recourse to the Court, in the absence of agreement to employ some other pacific means of settlement. There is no reason to believe that the parties to the Pact of Bogota intended anything different when they agreed to such a clause in Article II, especially in view of the express language of Articles 23 and 24 of the Charter of the OAS, which were concluded simultaneously. Judge Ago expressed the same idea in his separate opinion to the Judgment of the Court of 26 November 1984:

> "More generally speaking, I am in fact convinced that prior resort to diplomatic negotiations cannot constitute an absolute requirement, to be satisfied even when the hopelessness of expecting any negotiations to succeed is clear from the state of relations between the parties, and that there is no warrant for using it as a ground for delaying the opening of arbitral or judicial proceedings when provision for recourse to them exists." (*Military and Paramilitary Activities in and against Nicaragua,*

Article II does *not* say, for example, that *unless* the parties are of the opinion that their dispute cannot be settled by direct negotiations through the usual diplomatic channels, the parties shall *not* use the procedures established in the present Treaty . . .

Jurisdiction of the Court and Admissibility of the Application, I.C.J. Reports 1984, pp. 515-516.)

196. Authoritative commentators have also rejected an interpretation of such a clause that would give a State party an absolute veto, enabling it to be used unilaterally to block resort to the Court by contending that further negotiation might be fruitful. They have deemed it unacceptable that a State should renege on a jurisdiction it has accepted simply by alleging that negotiations, interrupted by the lodging of an Application, could have continued.

197. Thus, when there is disagreement between the parties, the issue is to be resolved not so much on the basis of the particular form of words used in the compromissory instrument, but by an objective evaluation of the possibilities for settlement of the dispute "by direct negotiations through the usual diplomatic channels". This is the position of Ambassador Rosenne:

> "Neither Court, it seems, has attached much significance to these different formulations [in the title of jurisdiction, referring to disputes which *cannot be* or *are not* settled by negotiation] and both have directed their attention in the cases mentioned, to an examination of the question whether the existence of a deadlock in the negotiations is established, and whether any reasonable probability exists that further negotiations would lead to a settlement." (*The Law and Practice of the International Court*, Sijthoff, Leyden, 1965, 2nd ed., 1985, Vol. II, p. 515.)

198. Rosenne's analysis reflects very accurately the consistent jurisprudence of the Court. Thus, for example, in the *Right of Passage over Indian Territory* case, the Court rejected the third preliminary plea in bar by India that prior negotiations had not been exhausted, commenting that

> "While the diplomatic exchanges which took place between the two Governments disclose the existence of a dispute between them, on the principal legal issue which is now before the Court, namely, the question of the right of passage, an examination of the correspondence shows that the negotiations had reached a deadlock." (*I.C.J. Reports 1957*, p. 149.)

199. Similarly, interpreting Article XXI, paragraph 2, of the Treaty of Amity, Economic Relations and Consular Rights of 1955 between the United States and Iran, the Court held that

> "the immediate and total refusal of the Iranian authorities to enter into any negotiations with the United States excluded *in limine* any question of an *agreement* to have recourse to 'some other pacific means' for the settlement of the dispute".

The United States was therefore entitled to bring a case before the Court on the basis of this provision. (*United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1980*, p. 27.) The same reasoning led the Court to the same conclusions with regard to Article XXIV of the Treaty of Friendship, Commerce and Navigation of 1956 between the United States and Nicaragua (*Military and Paramilitary Activities in and against Nicaragua, I.C.J Reports 1984*, p. 428; *I.C.J. Reports 1986*, p. 137; see also the separate opinions of President Nagendra Singh and Judge Sir Robert Jennings, *I.C.J. Reports 1984*, pp. 445-446, 555-556.)

200. The P.C.I.J. reached the same result in interpreting Article 26 of the Mandate for Palestine of 1920. It dismissed the preliminary pleas in bar

entered by the United Kingdom that there was nothing to show that the dispute could not be settled by negotiation:

> "Negotiations do not of necessity always presuppose a more or less lengthy series of notes and despatches; it may suffice that a discussion should have been commenced, and this discussion may have been very short; this will be the case if a deadlock is reached, or if finally a point is reached at which one of the Parties definitely declares himself unable or refuses to give way, and there can be therefore no doubt that the dispute cannot be settled by diplomatic negotiation." (Case of the *Mavrommatis Palestine Concessions, P.C.I.J., Series A, No. 2*, p. 13.)

This analysis was followed in its entirety by the present Court in its Judgment of 21 December 1962 holding that the requirement of prior diplomatic negotiations laid down in Article 7 of the Mandate for South West Africa was met as soon as "a deadlock was reached" in the negotiations (*South West Africa* cases, *I.C.J. Reports 1962*, p. 345). Thus, in so far as Article II of the Pact of Bogotá contains a requirement that the dispute cannot be resolved by direct negotiations, that requirement presents no obstacle to the exercise of jurisdiction by the Court in this case.

201. The facts of the present case fully satisfy the cited pronouncements of the Court. Nicaragua has been protesting diplomatically to Honduras continuously since 1980 with respect to all of the Honduran actions described in the Application: the acceptance of thousands of mercenaries establishing and maintaining military bases and other facilities in Honduran territory for the purpose of carrying out armed attacks in and against Nicaragua; the provision of vital intelligence and logistical support to facilitate the mercenaries' attacks on Nicaragua; the active participation of Honduran armed forces in attacks staged by the mercenaries inside Nicaragua; and the conduct of continuous military manoeuvres with the armed forces of the United States for the purpose of intimidating Nicaragua and intervening in its internal affairs. Numerous diplomatic protests have been registered. Notwithstanding these protests, Honduras's unlawful activities have not only continued, but steadily intensified.

202. Since 1981, Nicaragua unsuccessfully has sought a settlement through direct negotiation with Honduras, as described in the Introduction (paras. 1-47, *supra*). The heads of State of the two countries met on 13 May 1981 to discuss these matters, but the transgressions complained of by Nicaragua grew only worse thereafter. Several meetings took place subsequently, involving high-ranking military and civilian officials from both States, but still there was no progress toward a settlement. (Paras. 34-35, *supra*.) A watershed was reached in April 1982 when, in response to the Nicaraguan Foreign Minister's 7-point plan for resolving the dispute, the Honduran Foreign Minister wrote back rejecting any and all bilateral efforts to reach a settlement (para. 34, *supra*). Since then, Honduras has steadily maintained its position of refusing to engage in direct negotiations with Nicaragua, either through the usual diplomatic channels or otherwise[1]. On this record, it is evident that there is no

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[1] Honduras does not contend, nor could it, that the participation of the two States, among others, in the multilateral Contadora process, constitutes "direct negotiations through the usual diplomatic channels". The Contadora negotiations are neither "direct" (as between Nicaragua and Honduras) nor are they "the usual diplomatic channels". The relation of the Contadora process to the jurisdictional issues is discussed more fully in paragraphs 204-234, *infra*.

likelihood of direct negotiations between the Parties even occurring, let alone leading to a settlement.

203. Under the established jurisprudence of this Court and its predecessor, this is more than sufficient to satisfy any requirement of prior recourse to diplomacy that might exist.

B. The Contadora Process Is Not a "Special Procedure" under Article II of the Pact of Bogotá and, in Any Event, It Does Not Address the Bilateral Legal Dispute between Nicaragua and Honduras

204. Honduras also contends that the continued functioning of the Contadora process defeats the Court's jurisdiction in this case, because it is a "special procedure" within the meaning of Article II of the Pact. Once such a procedure has been initiated, according to Article IV, "whether by agreement between the parties or in fulfilment of the present Treaty . . . no other procedure may be commenced until that procedure is concluded". Thus, says Honduras, Nicaragua is precluded from resorting to the Court under Article XXXI until the Contadora process "has been concluded".

205. The concept of "special procedures" has not been judicially defined nor much elucidated by the commentators. Mexico, which introduced the idea in the debates at Bogota, had in mind cases in which some specialized expertise might be useful in solving a particular controversy[1]:

> "A controversy whose character is fundamentally economic might be resolved by an expert appraisal. In the case of a technical controversy about engineering, it could be arranged that a technical engineer organization carry out an investigation and resolve it." (Ministerio de Relaciones Exteriores, *Novena Conferencia Internacional Americana, Actas y Documentos*, Bogota, 1953, Vol. IV, p. 126.)

The Contadora process certainly does not fit that description. However, apart from this, there is nothing in the books.

206. The question must thus be approached as one of principle. In this light, it is appropriate to make some preliminary observations.

207. *First*, under Article IV, the initiation of any special procedure constitutes a waiver of rights, not only of recourse to the Court, but to any other mode of pacific settlement until that procedure is "concluded". Since such waivers are not to be lightly inferred, the party asserting the bar should be able to point to some express indication that the process in question was regarded as a special procedure within the meaning of Article II or that a waiver was intended.

208. *Second*, Article IV refers to a procedure initiated "by agreement between the parties or in fulfilment of the present Treaty . . .". This seems to import an agreement confined to the parties to the particular dispute, with particular reference to that dispute. Moreover, when a procedure other than one specified in the Pact is in issue, there should be some acknowledgment, express

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[1] Original text in Spanish.

"Una controversia fundamentalmente económica puede resolverse con una valorización de expertos. En una controversia de técnica de ingeniería, se puede llegar a establecer que un organismo técnico de ingeniería haga una labor de investigación y la resuelva."

or implied, that the process is undertaken for the purpose of discharging the treaty obligations of the parties.

209. *Third*, the procedures specified in the Pact all have definite time-limits. Under Article XIII, if "no solution to the controversy has been reached within five months after mediation has begun, the parties *shall have* recourse without delay to any one of the other procedures" established by the Pact (emphasis added). Article XXV provides that a Conciliation Commission "shall conclude its work within a period of six months from the date of its installation . . .". These tight time-limits reflect the demand of the OAS Charter for a system of peaceful settlement to ensure "that no dispute between American States shall fail of definitive settlement within a reasonable time" (Art. 23 (now Art. 25)). It follows that an open-ended process, without a fixed terminus, should not be considered a special procedure within the meaning of the Pact, unless an intention to the contrary is very clearly expressed.

210. When considered in the light of these general principles, the Contadora process, though undoubtedly of the utmost importance for the general exploration and resolution of the overall regional problem does not qualify as a "special procedure" within the meaning of Article II and subject to the waiver requirements of Article IV.

I. Neither the Parties, the Contadora Countries Nor Any Other State or Competent International Organization Has Given Any Indication, Express or Implied, that the Contadora Process Is a Special Procedure within the Meaning of Article II

211. It is reasonable to suppose that if the participants in the Contadora process had understood it to be a "special procedure" under Article II of the Pact of Bogotá — such that until its conclusion no other pacific procedure could be used — this understanding would have been manifested somewhere in the numerous Contadora documents and drafts that have been prepared and circulated, in the declarations of the five Central American States[1] participating in the process, in the declarations of the four States that comprise the Contadora Group[2] or in the declarations of the four States that comprise the Support Group[3]. All 13 States connected with the Contadora process are members of the Pact of Bogotá, and would plainly have an interest in whether their participation in the process might affect their right to any other pacific procedure under the Pact during the pendency of the process.

212. It is significant, then, that not a single Contadora document or draft, not a single declaration by any member of the Contadora Group, and not a single declaration by any member of the Support Group suggests in any way that the Contadora process is a "special procedure" under Article II of the Pact of Bogotá, or that it has been understood as such by any of the 13 American States connected with these multilateral negotiations. Indeed, with the sole exception of Honduras's statement in its Memorial of 23 February 1987, not a single declaration by any Central American State has reflected such an understanding of the Contadora process. Honduras itself manifested a contrary understanding prior to the filing of its Memorial. In 1985, the Honduran plenipotentiary to the Contadora process said that Contadora was a procedure totally outside the Pact of Bogotá:

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[1] Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

[2] Colombia, Mexico, Panama and Venezuela.

[3] Argentina, Brazil, Peru and Uruguay.

> "On the other hand, the continental system of the Organization of American States, which is endowed with an instrument for the pacific settlement of disputes such as the Pact of Bogotá or with an instrument of collective security such as the Treaty of Rio, is too lethargic to play a role in the case of Central America." ("La crise centraméricaine et les négociations de Contadora", *AFDI*, 1985, pp. 272-273.)[1]

2. The Contadora Process Cannot Have the Effect of Waiving Recourse to Other Procedures, as Required by Article IV of the Pact, because It Has Never Been Envisaged as an Exclusive Means to Settle Disputes among Central American Countries

213. The Contadora process is not an organization or activity of the Organization of American States. It is not a Pan American effort, but a strictly Latin American one. The notion that Contadora is the exclusive venue for the solution of disputes between Central American countries has never been accepted, either by the Contadora Group itself, other international organs such as the United Nations, the OAS or this Court or by any Central American State. Honduras itself did not take that position before the present proceeding.

214. *Honduras* — On 29 March 1983, Honduras urged the Permanent Council of the OAS to invite the States of Central America to begin direct negotiations on a five-country basis. On 5 April it tabled a draft resolution to that end. (Memorial, Annex 10.) Again in July of that year it requested a meeting of the Council to examine threats to peace and security in Central America. (*Ibid.*, Annex 12.) At the express request of the Contadora Group, the draft resolution was not debated. Clearly, however, Honduras did not consider the Contadora process as precluding other avenues of settlement among the parties.

215. In October 1984, Honduras fostered the creation of the Tegucigalpa Group of three Central American States to oppose a Contadora initiative. (See Introduction, paras. 41-43, *supra*.)

216. In a recent article on the Contadora negotiations Professor Jorge Ramon Hernandez Alcerro, the Honduran representative, said:

> "National or internal negotiations are naturally insufficient to re-establish a normal situation in Central America. Bilateral negotiations do not suffice either, since we should then have to exclude conflicts of a national or multilateral nature."[2] ("La crise centraméricaine et les négociations de Contadora", *AFDI*, 1985, p. 272.)

217. All these pronouncements establish that Honduras does not view the Contadora process as precluding its resort to other forums and methods for resolving Central American issues and problems.

218. *The OAS, the United Nations and the Court* — It is apparent from the many instances where the organs of the United Nations and the OAS consi-

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[1] The original text in French:

> "D'un autre côté, le système continental de l'Organisation des Etats américains, doté d'un instrument international de règlement pacifique des différends."

[2] The original text is in French:

> "Les négociations nationales ou internes sont naturellement insuffisantes pour rétablir la normalité en Amérique centrale. Les négociations bilatérales ne suffisent pas non plus, car nous laisserions en dehors les conflits d'ordre national ou les conflits de caractère multilatéral."

dered issues arising out of the situation in Central America that the operation of the Contadora Group is not conceived as foreclosing resort to these other political forums. However, the actions of these organizations go further and indicate expressly that Contadora is not regarded as displacing bilateral or other direct settlement efforts between the parties.

219. For example, in his report to the General Assembly of 9 October 1985, the Secretary-General of the United Nations emphasizes the need to seek bilateral solutions to border incidents:

> "Concurrently with the Contadora Group's search for a comprehensive solution, any border incidents that arise should be dealt with directly by the parties." (Memorial, Ann. 21, p. 143, *supra*, sec. 11.)

220. Similarly, in Resolution 702 (XIV/84), 17 November 1984, the OAS General Assembly resolved:

> "5. To urge all the Central American governments to manifest their will for peace and *to intensify their consultations among themselves* and with the Contadora group." *(Ibid.)*

221. The International Court of Justice itself, in the *Military and Paramilitary Activities* case, said it was

> "unable to accept either that there is any requirement of prior exhaustion of regional negotiating processes as a precondition to seising the Court; or that the existence of the Contadora process constitutes in this case an obstacle to examination by the Court of the Nicaraguan Application and judicial determination in due course of the submissions of the Parties in the case" (*I.C.J. Reports 1984*, pp. 440-441).

222. *The Contadora Group* — One would suppose that the Contadora Group itself would be the most jealous of its own exclusive jurisdiction, if it had such. On the contrary, the Group has encouraged the employment of a wide variety of settlement processes, except in rare circumstances, as in the case of the attempted formation of the Tegucigalpa Group by Honduras, where it appeared that such alternative avenues were not being pursued in good faith but were an effort to obstruct Contadora's own activities. Indeed, the Declaration of Cancún asserts that it is the States of Central America "which must shoulder the primary responsibility and make the major effort in the search for agreements insuring peaceful coexistence" (Memorial, Ann. 13). And the preamble to the revised Act for Peace and Co-operation in Central America expressly states that it is "without prejudice to the right of recourse to other competent international forums"[1] (Ann. 24).

223. Contadora has approved not only resort to more comprehensive political forums, but also bilateral and direct negotiating initiatives among the Central American States. Thus it encouraged "the resumption of talks between the Governments of the United States and of Nicaragua . . ." (Carabelleda Message, 12 January 1986, Memorial, Ann. 24). It has also supported various bilateral approaches between Nicaragua and Costa Rica:

— the joint Nicaragua-Costa Rica Commission, created on 15 June 1982 pursued its efforts for more than a year after the beginning of the Contadora consultations;

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[1] Original text in Spanish: "sin perjuicio del derecho de recurrir a otros foros internacionales competentes".

- Contadora was instrumental in the negotiation of an agreement establishing a Commission on Supervision and the Prevention of Border Incidents on 15 May 1984;
- in August and September 1984, the two countries undertook bilateral negotiations under the auspices of the French Government, aimed at resolving bilateral frontier problems;
- the Contadora Group and the Support Group also endorsed the meeting between the Vice Ministers of Foreign Affairs of the two countries in Managua on 28 February 1986;
- most important of all, the joint communiqué published in January 1987 by the Contadora Group and the Support Group after a peace mission to the capitals of the five Central American countries does not criticize Nicaragua's Applications to the Court, although Honduras and, to a lesser extent, Costa Rica, have launched an intense diplomatic campaign against these Applications. On the contrary, the communiqué emphasized that "the persistence of acts which violate international law" — which is precisely what the Court is empowered to determine — was one of the "greatest obstacles rendering dialogue difficult". (Memorial, Annex 33, p. 185, *supra*.)

224. There is no reason to believe that the attitude of the Contadora countries would be any different towards bilateral diplomatic exchanges between Nicaragua and Honduras. The reason for the failure of such support to appear in the record is the categorical rejection by Honduras of any bilateral negotiations.

225. Nicaragua itself, as noted above, has continuously sought direct bilateral talks with the Government of Honduras to resolve the issues between them. Although, as noted, since 1982 Honduras has consistently rejected these approaches, it has never cited the existence of the Contadora Group as a special procedure under Article II of the Pact of Bogotá as grounds for its refusal.

3. *The Contadora Process Cannot Be a Special Procedure within the Meaning of Article II because Its Subject-Matter Is Distinct from the Dispute before the Court*

226. The Contadora process, if it is successful, will lead to a diplomatic solution geared to a political compromise. The Court, by contrast, is required to adjudicate on the sole basis of international law. Thus, the purpose of the two exercises is different: the task of Contadora is to bring about through multilateral and political channels the conditions for a lasting peace in the whole region. The Court is being asked to settle a bilateral dispute on the basis of law. The difference in the character of the controversies submitted to the two procedures is apparent from a comparison of the basic documents in each. Nicaragua's Application asks the Court to find:

(a) that the acts and omissions of Honduras in the material period constitute breaches of the various obligations of customary international law and treaties specified in the body of this Application for which the Republic of Honduras bears legal responsibility;

(b) that Honduras is under a duty immediately to cease and to refrain from all such acts as may constitute breaches of the foregoing legal obligations;

(c) that Honduras is under an obligation to make reparation to the Republic of Nicaragua for all injury caused to Nicaragua by the breaches of obligations under the pertinent rules of customary international law and treaty provisions.

227. The provisions of the Draft Act of Contadora do not address any of these legal concerns of Nicaragua. Its sole purpose is to establish for the future the conditions of lasting peace in the region. As the Group itself explained, the Act

> "would establish the basis for respectful coexistence in the region and would promote sustained economic and social development and the strengthening of democratic and pluralistic solutions".

Its object is not to determine responsibilities in a dispute between two States or to fix the amount of the resulting reparation. A multilateral diplomatic forum, such as Contadora, addressing the broad and interacting problems of the region, would be very poorly equipped to resolve legal rights and obligations. From the beginning, the focus of Contadora has been "the political, economic and social problems which jeopardize the peace, democracy, stability and development" of the region (Memorial, Ann. 9). That is very different from the subject-matter of the dispute submitted to the Court in Nicaragua's Application[1].

Honduras itself concedes this point:

> "[T]he Contadora approach was not confined to a simple resolution of legal claims: it embraces agreements on legislative programmes, on military manœuvres, on levels of armaments, on foreign, military bases, on arms traffic, economic and social matters, refugees, and the establishment of new organs of supervision . . . [E]ven to the extent that the proposed Act will deal with the very issues which are the subject of the present claims by Nicaragua (or the inevitable counter-claims by Honduras), it cannot necessarily be assumed that there will be complete identity between what the Act might contain, and what a further judgment of the Court might contain. For, almost inevitably, to be acceptable to all parties the Act resulting from the Contadora process will have to involve elements of compromise. Such elements are foreign to the Court's judicial task, and thus no necessary identity of treaty (the proposed Act) and judgment can be assumed." (Memorial, at pp. 47-48, *supra*.)[2]

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[1] Honduras also argues that the participation of the two countries in the Contadora process makes this a dispute "in respect of which the Parties have agreed . . . to resort to other means for the pacific settlement of disputes" and thus it is excluded from the jurisdiction of the Court by paragraph 2 *(b)* of the purported "new declaration" of Honduras. It has already been shown that this so-called new declaration is invalid in general, and ineffective against Nicaragua in particular, as a derogation from the 1960 declaration of Honduras accepting the jurisdiction of the Court under the Optional Clause. It has also been shown that this purported new declaration cannot affect the acceptance of the Court's jurisdiction by Honduras under Article XXXI of the Pact of Bogotá. The reasons adduced in this chapter showing that the Contadora process is not a "special procedure" under Article II of the Pact of Bogota are equally potent to demonstrate that the dispute is not one "in respect of which the parties have agreed . . . to resort to other means for the pacific settlement of disputes" within the meaning of paragraph 2 *(b)* of the purported declaration.

[2] Honduras suggests that even if the Contadora process is not a "special procedure" under Article II of the Pact of Bogotá, Nicaragua is nevertheless precluded from recourse to this Court under "elementary principles of good faith" by virtue of the Declaration of Esquipulas signed by the Presidents of the five Central American States in May 1986. (Memorial, p. 47, *supra*.) This suggestion is completely unsupportable and can be dispensed with quickly.

As Honduras itself recognizes, the agreement of the Central American Presidents was simply

4. To Require that the Contadora Process Has Concluded before Permitting Nicaragua to Invoke the Jurisdiction of the Court Would Not Serve the Purpose of the Exhaustion Requirement of Article IV

228. Contadora is a broadly political process, aimed at unravelling a broad complex of regional problems. The Group has always insisted that it is an exclusively political forum. So have the Central American countries. In the Declaration of Esquipulas, of 25 May 1986, the five Central American heads of State agreed:

> "that the best *political* forum which is at present available to Central America for the achievement of peace and democracy and the reduction of tensions produced in the countries of the region is the Contadora process" (Memorial, Ann. 26 (emphasis added)).

229. There can be no doubt that there is a general regional conflict in Central America. Nicaragua does not contest that fact nor the fact that the Contadora process is "the best political forum" for dealing with it. It is a privileged though not exclusive way of seeking solutions to the root causes of the general conflict that has spread throughout the region.

230. For that very reason, resort to such processes in general and to the Contadora process in particular should not be made contingent on waiver of a party's right to invoke other processes for the solution of bilateral disputes that exist alongside the general conflict. The settlement of such disputes depends not so much on the Contadora Group as on direct means of pacific settlement between the States concerned. The parties should not be forced to choose between a process designed to attack the roots of the general conflict and the varied modes of dispute settlement that can help to improve bilateral relations among them.

231. Article IV of the Pact of Bogotá requires no such choice. It was designed essentially to prevent what might be called "forum-shopping" in bilateral disputes — where a party invokes one settlement process and, if it seems to be going against him, breaks off and switches to another, thus avoiding an adverse result.

"That the best political forum which is at present available to Central America for the achievement of peace and democracy and the reduction of tensions produced in countries of the region is the Contadora process . . ." (Memorial, pp. 46-47, *supra*, and Ann. 26.)

Nicaragua has always been, and remains committed to this position. It has always been, and remains prepared to carry out its commitment to Contadora in good faith. However, there is nothing whatsoever in this commitment that requires Nicaragua (or any other State) to abandon its conventional rights under the Pact of Bogota to use the pacific procedures set forth in the Pact, including recourse to this Court to resolve a separate and distinct bilateral legal dispute that is not even addressed by Contadora. Indeed, the Declaration of Esquipulas on which Honduras's "good faith" argument is based clearly states that Contadora is the *best political* forum which is *at present* available. There was no statement that Contadora was intended to be the *exclusive* forum and, indeed the language of the Declaration strongly suggests the contrary. Moreover, the objective of Contadora, according to the very language cited by Honduras, is stated as "the achievement of peace and democracy and the reduction of tensions", not the resolution of bilateral legal disputes, the determination of legal rights and responsibilities or the awarding of reparations.

Thus, neither Nicaragua nor any other State committed itself — in the Declaration of Esquipulas or at any other time — to use the Contadora process as the exclusive forum for the resolution even of the regional political disputes to which it is addressed, let alone to renounce its conventional rights in respect of bilateral legal disputes outside Contadora's preview.

232. That is not the case here. Nicaragua has supported and continues to support the Contadora process. It is the only one of the five Central American States that has expressed its willingness to adhere to every version of an Act of Contadora proposed by the Contadora Group. Honduras has refused to accept these initiatives, and in one case, Honduras organized the Tegucigalpa Group for the express purpose of defeating such a Contadora proposal.

233. Thus, Nicaragua is not seeking to abort Contadora or escape from it. On the contrary, Nicaragua has affirmed that it will continue to play an active role in the Contadora process, and there is no reason to doubt that this is so. The Pact of Bogotá does not require Nicaragua to forego bilateral methods of peacefully resolving bilateral problems in order to do so.

234. For these reasons, the bilateral legal dispute between Nicaragua and Honduras must be considered separate and distinct from the regional problems addressed by the Contadora process. As such, the Nicaragua-Honduras dispute is not subject to any "special procedure" under Article II of the Pact that would prevent resort to the Court until the Contadora process is concluded.

PART III

CHAPTER 5

THE MEANING AND APPLICATION OF THE RESERVATION OF HONDURAS CONCERNING ARMED CONFLICTS

A. General

235. The Memorial of Honduras invokes the reservation to the declaration on the jurisdiction of the Court dated 22 May 1986 according to which the declaration "shall not apply" to

> "disputes relating to acts or situations originating in armed conflicts or acts of a similar nature which may affect the territory of the Republic of Honduras, and in which it may find itself involved directly or indirectly".

236. The present section of the Counter-Memorial has the purpose of examining the meaning and mode of application of the reservation referred to in the previous paragraph, quite independently of the question whether it is applicable in the context of Article XXXI of the Pact of Bogotá.

B. Admissibility of the Reservation

237. In the Memorial in paragraph 4.14, the Respondent State invokes the reservation in the following passage:

> "4.14. The Statement of Facts contained in the Nicaraguan Application of 28 July 1986, paragraphs 2-9, 11, 13-20; and the description of the Nature of the Claim, paragraph 30, clearly demonstrate that the dispute alleged by Nicaragua falls within the terms of this reservation. Indeed, the essence of the Nicaraguan complaint is that Honduras has allowed its territory to become the base for hostile, armed expeditions by the *contras* and also by the armed forces of Honduras itself against Nicaragua. The dispute is therefore necessarily one covered by this reservation."

238. This mode of presenting a "preliminary objection" is incompatible with the clear provisions of Article 79 of the Rules of Court, of which paragraph 2 provides:

> "The preliminary objection shall set out the facts and the law on which the objection is based, the submissions and a list of the documents in support; it shall mention any evidence which the party may desire to produce. Copies of the supporting documents shall be attached."

239. The relevant part of the Respondent's Memorial makes no attempt at proper compliance with the Rules either in respect of the facts or "the law on which the objection is based". The reference to the text of the Nicaraguan Application is disingenuous to say the least. The text of an Application is not

a mode of proof but is directed to the purposes indicated in Article 38, paragraph 2, of the Rules of Court. Thus the Application is to contain "a succinct statement of the facts and the grounds *on which the claim is based*" (emphasis supplied), and the purpose is to indicate the facts *which it is intended to prove*. It is wholly improper for the Respondent to seek to rely upon recitals contained in the text of the Application.

240. It might be otherwise if the Respondent were to be understood as *admitting* the facts related in the Application, but there is no evidence of such intent, and such intent is not to be lightly inferred.

241. The preliminary objection must set out the facts on which it is based. (See Rosenne, *The Law and Practice of the International Court*, Sijthoff, Leyden, 1965, 2nd ed., 1985, p. 450.) Reference to the contents of the Application circumvents the Rules of Court especially when such reference is not accompanied by any facts independently evinced by the Respondent.

242. In any event, even if, for the sake of argument, it were in principle appropriate to refer to the Application in the present context, the matters related in the paragraphs of the Application cited by the Memorial do not provide any support for the proposition that those matters "originate in armed conflicts or acts of a similar nature".

243. Thus, with reference to the paragraphs cited in the Honduran Memorial:

(i) Paragraph 2 refers to "armed attacks against the territory of Nicaragua" and such attacks do not necessarily constitute an "armed conflict" (as will be explained in more detail subsequently).

(ii) Paragraph 3 refers to "armed attacks consisting of sporadic forays into Nicaraguan territory with the object of rustling cattle and pillaging peasant communities". It is difficult to detect the existence of an "armed conflict" in this type of setting.

(iii) Paragraph 4 refers to attacks aimed at government installations, the ambushing of military patrols, and attacks upon civilians. Serious though such incidents were, their occurrence does not of itself produce evidence of an ongoing state of affairs which could amount to an "armed conflict".

(iv) Paragraph 5 merely states that these activities were the subject of diplomatic Notes directed to the Honduran Government.

(v) Paragraph 6 refers to changes in the composition, training and organization of the armed bands.

(vi) Paragraph 7 refers to a single incident.

(vii) Paragraph 8 refers to the sending of protest Notes to Honduras.

(viii) Paragraph 9 refers to the holding of talks between the Heads of State of Nicaragua and Honduras on 13 May 1981 at Guasaule. As will be demonstrated in due course, the Joint Communiqué which was agreed upon makes no reference either to an armed conflict or to anything similar.

(ix) Paragraph 11 refers simply to an increase in the number of armed attacks.

(x) Paragraphs 13 to 20 refer to attacks and other incidents, including aerial intrusions, and also to actions constituting threats of force. However, such incidents and episodes are diverse in character and intermittent. This material does not produce the profile of an "armed conflict".

(xi) Paragraph 30 constitutes a formal statement of the nature of the claim and contains no evidence that the breaches of legal duties specified in the body of the Application could, with any justification, be characterized as an "armed conflict or acts of similar nature".

244. The conclusion warranted by this examination of the material passage of the Respondent's Memorial is that both as a matter of form and as a

matter of substance the "preliminary objection" presented is substantially incompatible with the Rules of Court and consequently inadmissible.

C. Failure to Discharge the Burden of Proof

245. Apart from the question of the admissibility of the preliminary objection advanced by Honduras within the legal régime of the Rules of Court, there is a separate issue concerning the burden of proof to be discharged by a State invoking a reservation to its acceptance of jurisdiction by virtue of the Optional Clause. In the first place, as a matter of principle and good policy a preliminary objection must have substance and respectability. In short, it must not be a mere manœuvre built out of formal appearance and tactical need. In the words of Dr. Shabtai Rosenne:

> "The important thing is that the document setting forth the objection should indicate what the facts are on which the objection is based. This is necessary in order to prevent the right to suspend the proceedings on the merits from being used abusively or frivolously. It thus accords a measure of protection to the State against which the objection is made, and enables the Court to exercise judicial control over what is technically an exceptional procedure." (*The Law and Practice of the International Court*, 2nd ed., 1965, p. 450.)

246. In the submission of the Government of Nicaragua, the Memorial of Honduras has failed to discharge the burden of proof on the relevance and validity of the reservation invoked. The formal and peremptory mode of invocation adopted in the Memorial involves precisely the type of abuse adverted to by Dr. Rosenne in the passage quoted. As the Court observed in its Judgment in the jurisdiction phase of the case of *Nicaragua* v. *United States*, "it is the litigant seeking to establish a fact who bears the burden of proving it . . ." (*I.C.J. Reports 1984*, p. 437, para. 101). In the present case the Respondent State has not adduced any evidence as such to justify the use of the "armed conflicts" reservation, and the formal mode of calling up the reservation is not legally sufficient to put it in issue.

247. Whilst the Government of Nicaragua does not, in the light of the foregoing, consider that the Respondent State has succeeded in putting its "armed conflicts" reservation in issue, all relevant questions will be examined in spite of this necessary element of contingency.

D. The Application of the "Armed Conflicts" Reservation in the Light of the Conduct of the Parties

248. It is necessary to examine the meaning and application of the phrase "armed conflicts or acts of a similar nature" in terms of objective criteria and this examination will be undertaken in due course. However, the conduct of the Parties in the material period must be taken into account in that it provides cogent evidence of the actual nature of the relations of Honduras and Nicaragua. Such evidence is significant first, because it provides a framework or coherent political context within which specific incidents can be appreciated and, secondly, because the contemporaneous views and conduct of the Parties most closely concerned provide the best evidence of the existence or otherwise of an "armed conflict".

249. When the conduct of the Parties is examined it will be seen that they

did not consider that an "armed conflict" existed. Moreover, their attitudes were completely in line with the normal experience of States facing abnormal situations in their border regions. The occurrence of incursions, border incidents and other episodes of violence, are commonly regarded for what they are — illegal acts, acts constituting threats to the peace or breaches of the peace — but *unless other circumstances are present* these are not considered to amount to "war" or "armed conflict".

250. In fact, it is a matter of public knowledge that the Governments of Honduras and Nicaragua have not characterized their relations in terms of "armed conflict". An episode which typifies the situation is the talks between the Heads of State at El Guasaule and the Joint Communiqué which was then adopted, dated 13 May 1981 (Ann. 12). The text of the Joint Communiqué, in material part, is as follows:

> "Among the themes treated in the meeting was in the first term the analysis of the problems that have occurred on the frontier between both countries, foreign to the will of the Governments of Nicaragua and Honduras, and that caused an apparent distancing.
>
> During the meeting, both executives agreed to exhort the media for social communications to moderate the tone and treatment that are given to the problems that have been arising as the best contribution of those media to the process of approachment and peaceful solution to any problem that could exist . . .
>
> Both executives agreed upon the scheduling of the following meetings:
>
> The first meeting to be effectuated into Tegucigalpa, at the level of Foreign Ministers, and will have as an objective the interchange of opinions regarding the international political situation and the relations between both sister countries.
>
> The second meeting to be effectuated in Managua, will be at the level of Ministers of Defense and Chiefs of Staff, and will have as an end the preparation of joint plans of action to eliminate the risks of new incidents in the border zone.
>
> Both executives manifested their purpose of making known to potential highjackers of airplanes or boats that they will not find, either in Honduras or Nicaragua, any type of protection or asylum."

Original text in Spanish:

> "Entre los temas tratados en la reunion, estuvo en primer termino el analisis de los problemas que se han sucedido en la frontera entre ambos paises, ajenos a la voluntad de los gobiernos de Nicaragua y Honduras, y que han dado lugar a un aparente distanciamiento.
>
> Durante la reunión, ambos mandatarios acordaron exhortar a los medios de comunicación social, a moderar el tono y tratamiento que se le da a los problemas que han venido surgiendo como el mejor aporte de estos medios al proceso de acercamiento y pacifica solución de cualquier problema que pudiera existir . . .
>
> Ambos mandatarios acordaron la programacion de las siguientes reuniones:
>
> La primera reunión se efectuará en Tegucigalpa, a nivel de Ministros de Asuntos Exteriores, y tendrá como objetivo el intercambio de criterios sobre la situación política internacional y las relaciones entre ambos paises hermanos.
>
> La segunda reunión, a efectuarse en Managua, sera a nivel de Ministros de Defensa y Jefes de Estados Mayores, y tendrá como finalidad la elaboracion de planes de acción conjunta para eliminar los riesgos de nuevos incidentes en la zona fronteriza.
>
> Ambos mandatarios manifestaron su propósito de hacer saber a potenciales secuestradores de aviones o barcos que no encontraran, tanto en Honduras como en Nicaragua, ningun tipo de protección o asilo."

251. The text of this document both as a whole and in detail is plainly incompatible with the existence of an "armed conflict" in the frontier region. The principal foci are the improvement of the forms of dialogue between the two Governments and "the elimination of the risks of new incidents in the frontier region".

252. The absence of any characterization of the facts and incidents affecting relations between the two countries as an "armed conflict" is also evident in key statements of the Honduran Government in subsequent years.

253. In a speech to the OAS Council special session on 14 July 1983, Roberto Martinez Ordoñez, Honduran Ambassador to the OAS, described "the critical situation in Central America". Elaborating on this theme, the Ambassador stated the following:

> "The Honduran constitutional government, headed by Roberto Suazo Cordova, thoroughly aware of its duties as a member of this organization, has given and continues to give its fullest support and co-operation to the efforts of the brother countries that make up the Contadora Group, with the clear objective of reaching, through a civilized dialogue and as soon as possible, serious regional agreements to reach a comprehensive settlement to the problems of the region.
>
> The key issues that characterize the Central American crisis were clearly identified at the outset of preliminary contacts between the foreign ministers of Colombia, Mexico, Panama, and Venezuela and the five Central American countries, which culminated in their first meeting held in Panama City from 19 to 21 April.
>
> In the communiqué issued by the Contadora Group after this meeting, the problem areas were identified as follows: the arms buildup, the control of weapons and their reduction, arms trafficking, the presence of military advisers and other forms of foreign military assistance, actions aimed at destabilizing the internal order of states, threats and verbal aggression, military incidents, and border tension."

254. There is no reference to an "armed conflict". The most serious elements in the list are "military incidents, border tension". Moreover, when later in the speech the Ambassador refers to "acts of provocation and aggression against Honduras" there is still no characterization of the situation as one involving "armed conflict" in the border region. Allowing for some rhetorical embellishment, the context is one of border tension and border incidents.

[255-]256. Some eight months later, Mr. Flores Bermudez expressed essentially similar views on behalf of Honduras in the Security Council. Apart from various assertions that certain of Nicaragua's actions (or alleged actions) threatened "the stability of the region", the strongest statement the Honduras representative had to make was as follows:

> "Despite this democratic path which is now being strengthened in Honduras, my country is the object of aggression made manifest through a number of incidents by Nicaragua against our territorial integrity and civilian population. Those elements, which have obliged Honduras to strengthen its defences, are mainly the disproportionate amount of arms in Nicaragua, the constant harassment along our borders, the promotion of guerrilla groups which seek to undermine our democratic institutions, and the war-mongering attitude of the Sandinist commanders, whose reckless, aggressive statements we mentioned earlier.
>
> We do not wish to get into a squabble with our neighbour, Nicaragua. What we do want is to say that to cast the Central American problem in

> terms of Nicaragua's interests, as reflected in the initial draft resolution submitted by that country is a conceptual error. It is not just one country which is affected; it is not only one country which is suffering from conflicts. It is not only one people which is suffering and bewailing the fate of its children; it is not just Honduras and Nicaragua. It is a Central American problem, without exception, and it must be solved regionally. This view has been brought out again and again by all Central Americans throughout the Contadora negotiation process and must be reflected in the decisions adopted by this Council." (S/PV.2529, pp. 37-38, United States Counter-Memorial, Ann. 60.)

257. These official statements, taken together with the Joint Communique of 14 July 1981, indicate that the Honduran Government regarded the situation to be unsatisfactory and to involve potential threats to the peace of the region. However, *in terms of specific charges of violent action* the complaint is essentially about border incidents and sporadic incursions.

258. This conclusion is amply confirmed by the three diplomatic Notes addressed by Honduras to the Nicaraguan Government on 5 July 1983, 11 July 1983, and 20 July 1984. (United States Counter-Memorial, Ann. 61.) These *three* Notes cover a period of *one* year. The first related to two incidents caused by mines. The second related to four incidents covering a period of a few days, and the third to a single incident. A persual of these three Notes provides a significant and authentic commentary upon the more generalized assessments in the speeches of Honduran representatives before international organizations. Their contents (which are purely *ex parte* expressions of view of behalf of Honduras) do not provide evidence of a state of affairs which could reasonably be described as an "armed conflict". It would in any case be unusual for a government to describe border incidents and incursions in terms of an "armed conflict". The Honduran documentation (as to the contents of which the Government of Nicaragua reserves its position) in the Annexes to the Memorial confirms the picture of sporadic border incidents separated both in time and in location (see Anns. 48-51, inclusive).

259. The evidence of the Honduran attitude is given further confirmation by the contents of the important Honduran Note dated 18 April 1984 addressed to the Secretary-General of the United Nations (Ann. 25). The Court will no doubt recall that by this date the Honduran Government would be aware of the Nicaraguan Application dated 9 April 1984 and it can thus be assumed that the text of the Note of 18 April would have been the object of considerable attention. The Note refers to the existence of "disputes" and makes certain accusations against Nicaragua, but nowhere does it refer to, or assume the existence of, an "armed conflict" between Honduras and Nicaragua. In the same vein, the only reference to the provisions of the United Nations Charter is to Article 52 concerning regional settlement of disputes. No reference is made to Article 39 or 51, either directly or by implication.

E. The Criteria Relevant to the Determination of an Armed Conflict or Acts of Similar Nature

(a) *The Concept of an Armed Conflict*

260. Whilst the legal sources are replete with examinations of the concepts of "armed attack", "aggression", "the use of force", "war" and so forth, there is little or no guidance on the meaning of the term "armed conflict".

(See, for example, Sorensen (ed.), *Manual of Public International Law*, Macmillan, London, 1968, pp. 744-750; Whiteman, *Digest of International Law*, Vol. 10 (US Department of State Publication, 8367, released April 1968).) In so far as the term "armed conflict" is a term of art, it refers to a conflict to which the humanitarian law of war may be applicable or it appears to provide the contemporary equivalent of the concept of "war" or "state of war". However, even if in certain contexts the term constitutes a term of art with a uniform and certain content — and this is a matter of doubt — for present purposes the task is to determine the meaning of the term in the context of the Honduran declaration and the "preliminary objection" based thereon.

261. There is no presumption that the phrase thus employed by Honduras corresponds to any term of art or technical definition. In any case, the attendant phrase "or acts of a similar nature" qualifies the principal reference though without necessarily extending its scope.

262. In approaching the interpretation and application of the words, "armed conflicts or acts of a similar nature" two sets of criteria are relevant. The first set concerns the mode of application of the second set, and comprises two criteria as follows:

(i) The standard is to be based on the ordinary political judgment of an experienced government; and

(ii) the criteria are to be applied bearing in mind that the reservation is an exception to an acceptance of jurisdiction under the Optional Clause and that the burden of proof as to its application lies upon the Respondent State.

263. The second set consists of certain objective criteria or indicia based upon ordinary considerations of logic and policy. This set will be examined *seriatim*.

(b) *There Must Be a Use of Armed Force Which Is Persistent*

264. A primary element in the concept is the persistence of the use of armed force. The occurrence of border incidents, cross-frontier incursions, and aerial trespass does not amount to an armed conflict. Indeed sporadic violence and the commission of serious breaches of international law may and usually do take place against a background of generally normal relations and a stable territorial status quo based upon an absence of belligerent relations and the existence of an undisputed and properly demarcated frontier. Border incidents and cross-frontier incursions do not form part of a situation which can be characterized, without a lapse into eccentricity, as an "armed conflict". As the relevant diplomatic correspondence and official Honduran statements *(supra)* show, the situation between Nicaragua and Honduras in the material period presents a classical picture of frontier incidents and tension in the frontier region, but an absence of persistent conflict between armed forces.

(c) *The Use of Armed Force Should Have a Marked Intensity*

265. As a matter of the ordinary understanding of words the term "conflict" imports a certain degree of intensity of violence, denoting a test of will involving a substantial commitment of fire power and effectives. Thus *Chambers 20th Century Dictionary* (1983 edition) defines "conflict" to mean "a violent collision: a struggle or contest: a battle: a mental struggle". It is extremely doubt-

ful whether a sporadic pattern of frontier incidents and cross-frontier incursions could be said to attain the requisite level of intensity in any circumstances.

(d) *The "Armed Conflict" Must Be the Subject of a Notification to the Security Council in Accordance with Chapter VII of the United Nations Charter*

266. If a State claiming to be the victim of acts of violence by another State fails to make the notification to the Security Council required for the purposes of Chapter VII of the United Nations Charter, the acts of violence will not be classified by organs of the United Nations, including the Court, as an armed conflict entailing a possible decision to take enforcement measures, but as a matter of the peaceful settlement of disputes falling within Chapter VI. This proposition is based upon the Judgment of the Court in the jurisdiction phase of the case of *Nicaragua* v. *United States* (*I.C.J. Reports 1986*, p. 434, para. 94). This criterion is not proposed as being in all respects conclusive but it is a powerful indicator of the realities and Honduras has not made such a notification at any time.

(e) *The "Armed Conflict" Must Be the Subject of a Request by One of the States Concerned for Help in the Exercise of Collective Self-Defence*

267. This is a common sense indicator very similar to the factor previously examined. In the Judgment on the Merits in the case of *Nicaragua* v. *United States*, the Court applied this principle for the purpose of deciding whether the acts of the United States in question were justified by the exercise of the right of collective self-defence against an armed attack. The Court explained the legal position in the following passages of the Judgment:

> "232. The exercise of the right of collective self-defence presupposes that an armed attack has occurred; and it is evident that it is the victim State being the most directly aware of that fact, which is likely to draw general attention to its plight. It is also evident that if the victim State wishes another State to come to its help in the exercise of the right of collective self-defence, it will normally make an express request to that effect. Thus in the present instance, the Court is entitled to take account, in judging the asserted justification of the exercise of collective self-defence by the United States, of the actual conduct of El Salvador, Honduras and Costa Rica at the relevant time, as indicative of a belief by the State in question that it was the victim of an armed attack by Nicaragua, and of the making of a request by the victim State to the United States for help in the exercise of collective self-defence.
>
> 233. The Court has seen no evidence that the conduct of those States was consistent with such a situation, either at the time when the United States first embarked on the activities which were allegedly justified by self-defence, or indeed for a long period subsequently." (*I.C.J. Reports 1986*, p. 120, paras. 232-233.)

(f) *There Must Be a Recognition of Belligerency and of the Application of the Laws of Neutrality vis-a-vis a Third State*

268. In any normal context the existence of an armed conflict poses the question of relations between the protagonists and neutral States. It is absolutely clear that at no stage have relations between Nicaragua and Honduras been of a character which called in question the application of the law of neutrality.

(g) *The Continued Existence of a Pattern of Normal Diplomatic and Economic Relations Creates a Strong Presumption against the Existence of an "Armed Conflict" between the States Concerned*

269. This is an evidential indicator which reflects the realities of international life. In fact, throughout the relevant period Nicaragua and Honduras have maintained a pattern of normal relations. The pattern of normal relations between the two States includes the following elements:

(i) The maintenance of diplomatic relations.
(ii) The continuance of trade relations.
(iii) The maintenance of road, rail and air links, and postal and telegraphic communications.
(iv) No termination or suspension of treaties on the supposition that a state of war or armed conflict justified such action.
(v) An absence of restrictions of the kind normally imposed upon the nationals of a hostile neighbour in time of war or armed conflict.

(h) *The Attitude of Third States in Recognizing the Absence of an Armed Conflict*

270. An important evidential factor in the determination of the existence or otherwise of an "armed conflict" or "acts of a similar nature" in the relation between the parties is the attitude of third States in recognizing the absence of an armed conflict. In the nature of things much of the evidence is circumstantial in that third States omitted to characterize, either expressly or by implication, the situation in the frontier region as an "armed conflict". The omission can only be recorded as a matter of general and public knowledge.

271. In addition, there are a substantial number of multilateral declarations and resolutions of the political organs of the United Nations which do not characterize the relation between Honduras and Nicaragua in terms of an "armed conflict" or "acts of similar nature".

272. The relevant instruments include the following:

(i) "Note by the United Nations Secretary-General on 'The Situation in Central America'", S/16041, 18 October 1983. (Ann. 25.)
(ii) United Nations General Assembly resolution 38/10, 11 November 1983. (Ann. 26.)
(iii) Security Council resolution 530 (1983), 19 May 1983. (Ann. 27.)

273. The last-mentioned instrument is of particular significance. One of the principal *consideranda* to the resolution provides as follows:

> "*The Security Council,*
>
> *Deeply concerned*, on the one hand, at the situation prevailing on the inside of the northern border of Nicaragua and, on the other hand, *at the consequent danger of a military confrontation between Honduras and Nicaragua*, which could further aggravate the existing crisis situation in Central America . . ." (emphasis supplied).

274. This resolution was adopted in May 1983 and it characterizes the situation prevailing on the northern border of Nicaragua only in terms of a "consequent danger" of a "military confrontation between Honduras and Nicaragua". Obviously, such a characterization is a considerable remove from the existence of an "armed conflict".

275. In conclusion, the attitude of third States, as evidence in the resolutions of the political organs of the United Nations and otherwise, confirmed the absence of an "armed conflict" on the northern border of Nicaragua during the material period.

F. The Application of the Criteria in the Present Case

276. The cumulative effect of the criteria and indicia reviewed above is to rule out the application of the "armed conflicts" in the circumstances of the present case. Whilst there has been a series of incidents of which Nicaragua has cause to complain, there is, of course, no equivalence between breaches of international law and an "armed conflict". The relations between Nicaragua and Honduras in the material period did not involve a belligerency. The relevant statements from the Parties, and from external sources such as organs of the United Nations, reveal border tension and sporadic incidents. They do not indicate the existence of an "armed conflict". The exercise of political judgment by experienced governments both within the region and elsewhere did not result in an evaluation to the effect that an "armed conflict" existed.

277. The incidents cited in the Nicaraguan Application form particular delictual episodes and there is no evidence adduced by the Respondent to establish that these incidents involved "*facts or situations originating in armed conflicts or acts of a similar nature*". Nor is any evidence adduced by the Respondent to establish that the "armed conflicts or acts of a similar nature" were of a kind "*which may affect the territory of the Republic of Honduras*". Nor is any evidence adduced to establish that the "armed conflicts or acts of a similar nature" were those in which Honduras was "*involved directly or indirectly*".

278. These important conditions set forth in the Honduran reservation present issues of fact which, it is submitted, cannot properly be determined on the basis of inference or presumption. The issues are to be approached on the basis that the reservation is an exception to an acceptance of jurisdiction under the Optional Clause and, further, on the basis that the burden of proof as to the application of the reservation, and in particular the proof of critical elements of fact, lies upon the Respondent State.

G. The Reservation Does Not Possess an Exclusively Preliminary Character

279. Whilst the Government of Nicaragua does not consider that the "armed conflicts" reservation of Honduras is applicable in the circumstances, it is necessary to examine all the pertinent questions, in spite of this inevitable proviso. In the circumstances of the case there is strong justification for deciding that in any event the reservation concerned does not possess "an exclusively preliminary character" and thus the question of its application should be postponed for determination at the stage of the merits. In the jurisdiction phase of the case of *Nicaragua* v. *United States*, the Court recognized that such a way of proceeding was open to it in accordance with Article 79, paragraph 7, of the present Rules of Court (*I.C.J. Reports 1984*, p. 425, para. 73; and see also the Judgment on the Merits, *I.C.J. Reports 1986*, pp. 31-32, para. 43).

280. The "armed conflicts" reservation of Honduras is pre-eminently qualified for this procedure for two reasons. First, and as a matter of essence, the issues of fact and law which it inevitably presents cannot be approached either effectively or conveniently at the jurisdiction phase. The reservation trenches on questions of evidence and the essential legal merits of the case to such an extent that treatment at the merits phase is both appropriate and necessary. Indeed, the circumstances are closely parallel to those attending the multilateral treaty reservation in issue in the case of *Nicaragua v. United States*, where the Court disposed of the pertinent objection during the merits phase (*I.C.J. Reports 1986*, pp. 29-38, paras. 37-56). In particular, the "armed conflicts" reservation presents "a question concerning matters of substance relating to the merits of the case". (*I.C.J. Reports 1984*, p. 425, para. 76; *I.C.J. Reports 1986*, pp. 31-32, para. 43.)

281. The grounds for postponement to the merits phase cannot be those of efficiency and convenience alone. To determine the applicability of the reservation during the present phase would involve prejudging the merits at a point when the actual state of the pleadings on the matters relating to the reservation is highly unsatisfactory, given the superficial and peremptory mode by which the Respondent State has purported to invoke the reservation. The Respondent's Memorial does not adduce any evidence whatsoever, and the reference to the contents of the Application is not an acceptable form of adducing evidence. An Application is a formal notice of claim. According to the Rules of Court, it involves the "institution of proceedings" and not the beginning of the pleadings.

282. The foregoing considerations lead inexorably to the conclusion that the preliminary objection of Honduras based upon its "armed conflicts" reservation should be determined not to possess an exclusively preliminary character and, consequently, should be adjudicated upon at the merits stage.

II. Submissions Relating to the "Armed Conflicts" Reservation and "Preliminary Objection" of Honduras

283. On the basis of the consideration set forth in the previous paragraphs the Government of Nicaragua presents the following submissions.

(*a*) The "preliminary objection" based upon the "armed conflicts" reservation of Honduras is presented in a mode which is incompatible with the Rules of Court and is consequently inadmissible.

(*b*) The burden of proof in respect of the matters of fact which must be proved in order to justify the application of the reservation has not been discharged by the Respondent State and consequently the "preliminary objection" based upon the reservation has not been put in issue.

(*c*) There is no evidence adduced by the Respondent State to justify the application of the "preliminary objection" concerned.

(*d*) The conduct of the Parties at the material period is incompatible with the existence of an "armed conflict" or "acts of a similar nature".

(*e*) In any event, the facts as revealed in available documentation and as matters of public knowledge do not constitute "an armed conflict" or "acts of a similar nature" according to objective criteria and relevant indicia.

(f) Without prejudice to the foregoing, the "preliminary objection" does not, in the circumstances of the present case, possess an exclusively preliminary character in that the issues of fact and law which it inevitably presents cannot be determined effectively at the jurisdictional stage of the proceedings.

PART IV. THE ADMISSIBILITY OF THE APPLICATION

284. Honduras contends in Chapter II of its Memorial (pp. 33-39, *supra*) that Nicaragua's Application is "artificial" and vague. According to Honduras,

> "[t]hese characteristics of artificiality and vagueness are in themselves grounds upon which the admissibility of the Application ought to be denied" (*ibid.*, p. 13, *supra*; see also pp. 48, 80, *supra*).

Taking this further, Honduras suggests that these considerations somehow run counter to the "justiciability" of the dispute, not "inherently" (p. 56, *supra*), but because of the circumstances in this particular case. Consequently, Honduras invites the Court to "refrain from exercising its judicial function in these proceedings" (p. 13, *supra*; cf. also pp. 37, 39, *supra*). As shown below, these arguments are completely without merit.

CHAPTER 6

NICARAGUA'S APPLICATION IS FULLY ADMISSIBLE AND JUSTICIABLE

285. As shown below, the Application lodged by Nicaragua against Honduras on 25 July 1986 is neither artificial nor vague. To the contrary, it fully meets the requirements of the Statute and Rules of Court by succinctly stating the nature of the acts taken by Honduras against Nicaragua, and the legal principles and rules contravened by those acts. Moreover, even if Nicaragua's Application were in some way artificial or vague — it is not — that would not be sufficient reason to declare the Application inadmissible. Similarly, Honduras errs in attributing improper political motives to Nicaragua based on the filing of the Application — but even if Honduras were correct, the existence of political motives would not impair the Application's admissibility, since the Application relates to a perfectly "justiciable" dispute.

A. The Application Is Neither Vague Nor Incomplete

286. Honduras repeatedly refers to the purported "vagueness" and "incompleteness" of Nicaragua's Application (Memorial, p. 13, *supra*; cf. also pp. 34, 37, 38, 48, 80, *supra*), and contends that "the facts and grounds on which the claim is based" are not stated with sufficient precision (cf. *ibid.*, pp. 37 *et seq.*, *supra*).

287. The conditions to be met by an Application submitted to the Court are laid down in Article 40, paragraph 1, of the Statute and Article 38, paragraphs 1 and 2, of the Rules of Court. These Articles provide:

Article 40 of the Statute:

> "1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated."

Article 38 of the Rules of Court:

> "1. When proceedings before the Court are instituted by means of an application addressed as specified in Article 40, paragraph 1, of the Statute, the application shall indicate the party making it, the State against which the claim is brought, and the subject of the dispute.
>
> 2. The application shall specify as far as possible the legal grounds upon which the jurisdiction of the Court is said to be based; it shall also specify the precise nature of the claim, together with a succinct statement of the facts and grounds on which the claim is based."

288. As is apparent, paragraph 1 of Article 38 of the Rules of Court is drafted in almost exactly the same way as Article 40, paragraph 1, of the Statute, adding only a number of limited provisions. Paragraph 2 of Article 38, on the contrary, strengthens the statutory requirements, but it too imposes only limited obligations upon States, as attested by the expression "as far as possible".

289. This carefully drafted formula first appeared in Article 32, paragraph 2, of the 1936 Rules of Court (which corresponds to Article 38, paragraph 2, of the present text), for which the preparatory work unmistakably demonstrates that this was simply a recommendation to States and not an obligation which, if not respected, would render the Application inadmissible (cf. *P.C.I.J., Series D, 3rd add.*, pp. 156 *et seq.* and p. 574).

290. This coincides, furthermore, with the position of the Court itself:

> "The Court notes that whilst under Article 40 of its Statute the subject of a dispute brought before the Court *shall be* indicated, Article 32 (2) of the Rules of Court requires the Applicant 'as far as possible' to do certain things. These words apply not only to specifying the provision on which the Applicant founds the jurisdiction of the Court, but also to stating the precise nature of the claim and giving a succinct statement of the facts and grounds on which the claim is based." (*Northern Cameroons, Preliminary Objections, I.C.J. Reports 1963*, p. 28.)

291. In applying these provisions, the Court has always adopted a very flexible attitude and taken "a broad view" (*Société commerciale de Belgique, P.C.I.J., Series A/B, No. 78*, p. 173). In so doing, it has remained faithful to its own jurisprudence, whereby: "The Court, whose jurisdiction is international, is not bound to attach to matters of form the same degree of importance which they might possess in municipal law." (*Mavrommatis Palestine Concessions* case, *P.C.I.J., Series A, No. 2*, p. 34; cf. also *Certain German Interests in Polish Upper Silesia, Jurisdiction, P.C.I.J., Series A, No. 6*, p. 14; *Northern Cameroons, I.C.J. Reports 1963*, pp. 27-28; *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, pp. 428-429.)

292. A remarkable illustration of this attitude is to be found in the judgment pronounced by the Permanent Court on 14 June 1938, in the case of the *Phosphates in Morocco*. France requested the Court to declare the application inadmissible on the ground that:

> "[t]he Royal Italian Government has not clearly explained the grounds of jurisdiction on which it relies in bringing the case before the Court by Application and as, accordingly, it has not adequately complied with the terms of Article 32[1] of the Rules of Court" (*Phosphates in Morocco, P.C.I.J., Series A/B, No. 74*, pp. 16-17).

The Court rejected the objection, noting

> "[t]hat the explanations furnished in the course of the written and oral proceedings enable it to form a sufficiently clear idea of the nature of the claim submitted in the Italian Government's Application" (*ibid.*, p. 21).

293. This holding clearly demonstrates that the admissibility of the Application does not depend on its precision: what matters is that the Court should be able to acquire, thanks to the written and oral proceedings, a "sufficiently clear idea" of the nature of the claim formulated in the Application.

294. There are, moreover, excellent legal reasons why this is so. As was pointed out by Judge Read in his opinion in the *Certain Norwegian Loans* case:

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[1] Article 32 has since become Article 38 of the Rules of Court.

> "The Statute, by Article 40, imposes on the Applicant Government the requirements that 'the subject of the dispute and the Parties shall be indicated'. It does not require that the issues shall be defined; and, indeed, it makes it abundantly clear, by Article 48, that the definition of the issues by submissions is to be done in the course of the Written and Oral Proceedings'[1]. Applications have usually contained statements of the issues involved; but these have been treated by this Court and the Permanent Court as indications of the nature of the case." (*I.C.J. Reports 1957*, p. 81.)

295. It should be remembered that the Application must indicate "the subject of the dispute" (Art. 40, para. 1, of the Statute and Art. 38, para. 1, of the Rules of Court) and, "as far as possible", "the precise nature of the claim" (Art. 38, para. 2, of the Rules of Court). However, the "submissions" appear only in the Memorial and Counter-Memorial (Art. 49 of the Rules of Court). Indeed, the "final submissions" are made only "at the conclusion of the last statement made by a party at the hearing" (Art. 60, para. 2), and until that time, it is customary for parties to be able to modify their conclusions, provided the nature of the dispute is not modified (cf. *Société commerciale de Belgique, P.C.I.J., Series A/B, No. 78*, p. 173; M. Bos, *Les conditions du procès en droit international public*, Bibl. Visseriana, Vol. XIX, 1957, pp. 176 *et seq.*; Sh. Rosenne, *The Law and Practice of the International Court*, Sijthoff, Leyden, 1965, 2nd ed., 1958, pp. 584-589).

296. Thus, the Application introduces the case, and lays down its outline in a general fashion. But it does not imprison either the parties or the judges in a rigid framework and, contrary to what Honduras seems to think, it is not expected much less required to be a "miniature version" of the case it is putting forward.

297. Honduras does not contest that Nicaragua's Application indicates "the party making it", "the State against which the claim is brought" and "the subject of the dispute". Similarly, it does not appear to consider that "the nature of the claim" is insufficiently precise.

298. Instead, Honduras focuses principally upon the requirement of Article 38 (2) of the Rules of Court that the Application provide a "succinct statement of the facts and grounds on which the claim is based". Nicaragua has certainly provided such a statement. Honduras claims, however,

> "that a large number of the matters put forward by Nicaragua do not constitute concrete acts or omissions, identifiable by reference to place and to time. In reality, those matters are concerned with indeterminate situations or with opinions about intentions." (Memorial, p. 37, *supra*.)

In fact, the portions of the Application cited by Honduras do all relate to concrete acts or omissions by Honduras. At the appropriate time, that is, during the merits phase of the case, the Government of Nicaragua will submit evidence that clearly demonstrates this to be the case. At this point — and this is even more true of the application stage — there is no obligation for the Applicant State to produce the evidence that supports its claim (although some of that evidence is included simply by way of illustration in the exhibits attached to this Counter-Memorial). One of the main objects of the subsequent procedure is to prove the facts, and one wonders what useful purpose could be served by this procedure if the Applicant State had *in limine litis* to supply absolute proof of all the facts on which its case is based.

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[1] In this regard, the French text of Article 48 shows that this is so, while the English text is obscure.

299. In the 1936 and 1972 Rules, paragraph 2 of former Article 32 (which subsequently became Article 35 and then 38) of the Rules of Court specified that the "succinct statement of the facts and grounds" which had to be contained "as far as possible" in the Application, was to be developed "in the Memorial, to which the evidence will be annexed". According to authoritative commentators, the fact that this specification was abandoned in the 1978 Regulations

> "in no way provides that the Court intends to accept in future that developments and supporting proof be appended to the application. It would rather seem that it considered this provision to be pointless in view of well-established practice."[1] (Geneviève Guyomar, *Commentaires du Règlement de la Cour internationale de Justice*, Paris, 1983, p. 239; cf. also Shabtai Rosenne, *Procedure in the International Court*, Nijhoff, The Hague, 1983, p. 92.)

300. The second contention made by Honduras regarding the vagueness of the Application is equally without merit. Honduras argues that

> "another large group of matters put forward by Nicaragua in this Application consists of matters containing only a reference to the year in which they allegedly took place, without any geographical location on the territory in which they occurred. That is inadmissible, bearing in mind on the one hand that such matters are used as a basis for allegations of a very grave nature, which range from intervention in the internal affairs of Nicaragua to threats of or the use of force against Nicaragua." (Memorial, p. 37, *supra*.)

Honduras refers in particular to items 4, 6 and 13 (which are general presentations) and item 21 (which does not describe facts but introduces the subsequent presentation of the "legal grounds on which the claim is based").

301. As already shown, the Application is not the right place to detail all the various facts on which it relies. Indeed, in the present case, the "statement of facts" could not have been kept "succinct" had it been necessary to prove point by point the various breaches of international law which have to be attributed to Honduras. Nicaragua is, of course, prepared to establish these breaches in a detailed and exact manner during the subsequent stages in the procedure, when such detail becomes appropriate.

302. Moreover, Nicaragua has, in item 19 of the Application, already presented by way of example some of the most serious acts committed by Honduras in violation of international law. As the Permanent Court recognized in the case concerning the *Prince von Pless Administration*, this approach — presenting certain facts in the Application by way of example — is in conformity with statutory and regulatory requirements. (Order made on 4 February 1933, *P.C.I.J., Series A/B, No. 52*, p. 14.)

303. Honduras attempts to strengthen its argument of inadmissibility by

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[1] The original French text:

> "ne prouve pas du tout que la Cour ait l'intention d'admettre à l'avenir que les développements et preuves à l'appui soient joints à la requête. Il semblerait plutôt qu'elle ait considéré cette disposition comme inutile, compte tenu d'une pratique bien enracinée à présent en cette matière."

suggesting that "the lack of any geographical location" makes certain of Nicaragua's charges impossible to prove (or disprove) because of the inhospitable and inaccessible nature of the frontier area. According to Honduras, the lack of geographical specificity "makes the task of Honduras in conducting its own investigation into the allegations virtually impossible" (Memorial, p. 38, *supra*).

304. This point, however, has no bearing on the admissibility of the Application. An applicant's case is "not to be ruled out as inadmissible *in limine* on the basis of an anticipated lack of proof" (case concerning *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction of the Court and Admissibility of the Application, I.C.J. Reports 1984*, p. 437). Instead, questions of the sufficiency of proof must be dealt with at the merits stage of a case, where each party is required to adduce sufficient evidence to support its submissions to the Court. As the Court stated in *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility*:

> "the Court is bound to observe that any judgment on the merits in the present case will be limited to upholding such submissions of the Parties as have been supported by sufficient proof of relevant facts, and are regarded by the Court as sound in law . . . Ultimately, however, it is the litigant seeking to establish a fact who bears the burden of proving it; and in cases where evidence may not be forthcoming, a submission may in the judgment be rejected as unproved . . ." (*I.C.J. Reports 1984*, p. 437.)

Thus, Nicaragua cannot prevail unless the evidence satisfactorily establishes the validity of its claims.

305. Honduras appears to fear that in this case it will be especially difficult for it to adduce evidence of the facts it relies upon. In fact, the obstacles to gathering evidence pertaining to acts occurring in the frontier area are at least as great for Nicaragua as for Honduras. But even if Honduras should experience special difficulties in this regard, the Court has previously declared itself willing to admit:

> "a more liberal recourse to inferences of fact and circumstantial evidence. This indirect evidence is admitted in all systems of law, and its use is recognized as a special weight when it is based on a series of facts linked together and leading logically to a single conclusion" (*Corfu Channel, Merits, I.C.J. Reports 1949*, p. 18).

306. Thus, the difficulties invoked by Honduras cannot in any way be regarded as insuperable. Moreover, as already noted, those difficulties are not peculiar to Honduras, and more importantly, are not grounds for declaring the Application to be inadmissible.

307. Honduras's final objection to the drafting of Nicaragua's Application is Honduras's claim that the Application "deliberately confuses facts of a different nature and which can be attributed to different causes" (Memorial, p. 38, *supra*). As the principal example of this alleged obfuscation, Honduras claims that the Application attributes to Honduras certain acts which Honduras claims may only be imputed to the "*contras*". Of course, the assistance supplied by Honduras to armed Somocist groups operating from its territory, and the responsibility accruing to Honduras because of that assistance, is one of the main grievances presented in the Application, and one of the main points which the Court is requested to elucidate at the merits phase of the case. Certainly "the existence of any fact which, if established, would constitute a breach of international obligation", to quote the very terms of Ar-

ticle 36, paragraph 2, of the Statute, is not a point that can or should be determined at this stage, where the preliminary objections are being examined.

308. Honduras's second complaint of deliberate obfuscation concerns the incident that occurred at the frontier on 18 April 1985, cited in paragraph 19 of the Application. Clearly, if proven, a violation of waters which come under Nicaraguan jurisdiction, along with the use of armed force, falls well within the scope of the breaches of the rules of international law for which Nicaragua is entitled to reproach Honduras. However Honduras now wishes to characterize this incident, it is up to the Court to determine whether breaches of international law occurred and, if so, their nature and consequences. Further, it is somewhat astonishing that Honduras should find anything confusing about this example: in the "Chronology of Incidents with the Republic of Nicaragua" which Honduras has itself supplied to the Court, as Attachment No. 48 to its Memorial, Honduras lists as many as 31 incidents which occurred at sea and, it would seem, in the territorial waters of the Parties.

309. Although all the arguments invoked by Honduras in support of the alleged inadmissibility of the Application lack any consistency, they appear ultimately to reduce to an argument that Nicaragua has not yet supplied the Court with detailed evidence in support of its claims. As shown, however, this is not the purpose of the Application, which should be confined to "a succinct statement of the facts and grounds on which the claim is based"; rather, this is the purpose of the procedure on the merits.

B. Nicaragua's Application Is a Fully Justiciable Legal Dispute

310. Honduras also complains about the Application's purported "artificiality" (cf. Memorial, pp. 13, 48 and 80, etc., *supra*). This argument seems to be broken down into two parts: first, that Nicaragua had political motives for filing the Application; and second, that by applying to the Court, Nicaragua has attempted in an arbitrary fashion to split up a general conflict involving Central America as a whole into several bilateral disputes.

311. Honduras contends that this case is not "justiciable". Conscious of the fact that the Court firmly rejected a comparable argument put forward by the United States in *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility* (*I.C.J. Reports 1984*, pp. 431 *et seq.*), Honduras disavows the view that such a dispute is "inherently non-justiciable" (Memorial, p. 56, *supra*); it nonetheless contends that "the Court should refrain from exercising its judicial function in these proceedings" (*ibid.*, p. 13, *supra*). Although its rationale is not clear, Honduras claims that "the requirements for the due administration of international justice will be adversely affected" by taking a bilateral approach to a regional problem (*ibid.*, p. 34, *supra*; cf. also pp. 39 or 48, *supra*).

312. Thus, without invoking precise legal reasons, Honduras invites the Court not to exercise its functions, much more for reasons of expediency than of law. The Court should no doubt refuse to take a position on a case if, in so doing, it has to exceed the "inherent limitations" in its judicial function (*Northern Cameroons, I.C.J. Reports 1963*, p. 30). In this particular case, however, nothing of this kind has been, or could be, alleged by Honduras, which expressly admits that the claim is not "inherently non-justiciable".

313. Moreover, the Court has always considered that it should not pick and choose from among the cases submitted to it. In the *Nuclear Tests* case, for example, the Court found that the claims were groundless, but went on to state:

> "This is not to say that the Court may select from the cases submitted to it those it feels suitable for judgment while refusing to give judgment in others." (*I.C.J. Reports 1974*, p. 271.)

Indeed, once the Court has been regularly seized, it must give judgment:

> "Where . . . claims of a legal nature are made by an Applicant against a Respondent in proceedings before the Court, and made the subject of submissions, the Court has in principle merely to decide upon these submissions . . ." (*Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 431.)

314. Furthermore, in the present case, none of the objections raised by Honduras should lead this Court to refuse to exercise its judicial functions. Honduras objects first to the political motives which it claims inspired Nicaragua's Application. In its view, this "is a politically-inspired, artificial request which the Court should not entertain consistently with its judicial character" (Memorial, p. 80, *supra*; cf. also pp. 13, 20, 48, etc., *supra*). If the Government of Honduras means by this that the dispute submitted to the Court is "political" and does not enter into the category of "legal disputes" laid down in Article 36 of the Statute, it would merely be artificially re-opening the old and futile quarrel about the distinction between justiciable and "non-justiciable" cases.

315. Clearly, the case that Nicaragua has brought before the Court has a political origin and political causes. This is true of all disputes between States. As Hans Morgenthau wrote:

> "[A]ny external action by a State in fact involves its relationship with other States and, from the standpoint of the goal pursued, all external action by a State is thus always political"[1] (*La notion du politique et la théorie des différends internationaux*, Sirey, Paris, 1933, p. 25; cf. also Hersch Lauterpacht, "La théorie des différends non justiciables en droit international", *RCADI*, 1930-IV, Vol. 34, pp. 563-564, or Guy de Lacharrière, *La politique juridique extérieure*, Economica, Paris, 1983, *passim*, in particular pp. 150-151).

316. All international disputes thus have political and legal aspects. Viewed from a particular angle, they appear to be political, and viewed from a different angle, they appear to be legal, as the Court found in its Advisory Opinion of 20 July 1962:

> "It has been argued that the question put to the Court is intertwined with political questions and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise." (*Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), I.C.J. Reports 1962*, p. 155.)

317. This close interconnection between the legal and political aspects is all the more inevitable as the Court "lives" in an eminently political environment. As "the principal judicial organ of the United Nations", its activity cannot be dissociated from that of the Organization and it is called upon by its

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[1] "[T]oute action de l'Etat à l'extérieur touche en fin de compte à ses relations avec d'autres Etats, et, du point de vue du but qu'elles poursuivent, toutes les actions extérieures de l'Etat sont ainsi toujours politiques."

very vocation to participate in the achievement of the goals, obviously political in nature, assigned to that Organization:

> "The definition of the status of the Court as a principal organ, and the principal judicial organ, of what is essentially a political organization, the United Nations, emphasizes that international adjudication is a function which is performed within the general framework of the political organization of the international society, and that the Court has a task that is directly related to the pacific settlement of international disputes and hence to the maintenance of international peace . . . Litigation is but a phase in the unfolding of a political drama." (Sh. Rosenne, *The Law and Practice of the International Court*, Sijthoff, Leyden, 1965, 2nd ed., 1985, p. 2; see also the Court's judgment in the case concerning *United States Diplomatic and Consular Staff in Tehran, I.C.J. Reports 1980*, p. 22.)

318. In fact one of the main characteristics of all the cases submitted to the Court is that they pose factual problems in a political context, which first have to be resolved before the judicial function can be performed:

> "It is true that, in order to reply to the questions, the Court will have to determine certain facts, before being able to assess their legal significance. However, a mixed question of law and fact is nonetheless a legal question within the meaning of Article 96, paragraph 1, of the Charter and Article 65, paragraph 1, of the Statute." (*Western Sahara, I.C.J. Reports 1975*, p. 19; cf., also, *Legal Consequences for States of the Continued Presence of South Africa in Namibia, I.C.J. Reports 1971*, p. 27; *Aegean Sea Continental Shelf, I.C.J. Reports 1978*, p. 13.)

319. Thus, there are no disputes that are "by nature" political as opposed to others that are "legal" in substance. The general view is that a dispute is — or becomes — legal as soon as it is examined by a legal body whose task is to form a view based on rules of law, according to the legal arguments invoked by the parties.

> "Thus legal disputes are disputes which reveal, in the considerations which underlie the contentions, a difference of opinion on a matter which may be decided according to a rule of law which is indisputable, or the existence of which at the least may be supported by legal arguments." (H. Morgenthau, *op. cit.*, p. 20.)[1]

(See also H. Lauterpacht, *The Function of Law in the International Community*, Archon Books, Connecticut, 1966, pp. 187-189; V. Bruns, "La Cour permanente de Justice internationale: son organisation et sa compétence", *RCADI*, 1937-IV, Vol. 62, p. 611; H. Kelsen, *The Law of the United Nations*, Stevens & Sons, London, 1951, p. 478; M. Bos, *Les conditions du procès en droit international public*, Bibl. Visseriana, Vol. XIX, 1957, p. 57; R. Higgins, "Policy Considerations and the International Judicial Process", 17 *ICLQ*, 1968, pp. 58, 74; Ch. Rousseau, *Droit international public*, t. V, *Les rapports conflictuels*, Sirey, Paris, 1983, p. 254; Sh. Rosenne, *op. cit.*, p. 369; etc.)

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[1] "Les différends juridiques sont donc des différends qui révèlent, dans les considérations motivant les affirmations, une divergence d'opinion sur un point susceptible d'être tranché en vertu d'une règle de droit incontestable, ou dont l'existence peut à tout le moins être soutenue à l'aide d'arguments juridiques."

320. It is the submission of a dispute to the Court which renders it "legal" and which, one might say, "depoliticizes" it. This is why, as the Permanent Court stated in 1928:

> "[t]he Court's jurisdiction depends on the will of the Parties. The Court is always competent once the latter have accepted its jurisdiction, since there is no dispute which States entitled to appear before the Court cannot refer to it." (*Rights of Minorities in Upper Silesia (Minority Schools), P.C.I.J., Series A, No. 15*, p. 22.)

321. This very open character of the Court's jurisdiction is alone compatible with the highly comprehensive drafting of Article 36 of the Statute, which refers to "all cases" or "all matters" which parties submit to the Court. (See *South West Africa* cases, *I.C.J. Reports 1962*, p. 423 (separate opinion of Judge Jessup); *Military and Paramilitary Activities in and against Nicaragua, I.C.J. Reports 1986*, p. 289 (dissenting opinion of Judge Schwebel).)

322. Moreover, the Court has never refused to judge a case on the pretext that it has political aspects. There would be no point in listing the many such cases it has judged. Let it suffice to quote the Court's decision in the case concerning *United States Diplomatic and Consular Staff in Tehran*:

> "legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one element in a wider and long-standing political dispute between the States concerned. Yet never has the view been put forward before that, because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them. Nor can any basis for such a view of the Court's functions or jurisdiction be found in the Charter or the Statute of the Court; if the Court were, contrary to its settled jurisprudence, to adopt such a view, it would impose a far-reaching and unwarranted restriction upon the role of the Court in the peaceful solution of international disputes." (*I.C.J. Reports 1980*, p. 20.)

323. Thus, the Court would not deviate from its judicial functions by pronouncing judgment in this case; on the contrary, it would deviate from its judicial function by refusing to pronounce judgment. By following Honduras's line of argument on this point, the Court would be refusing to help the parties peacefully resolve their dispute and avoiding performance of its function as the "principal judicial organ of the United Nations".

324. In this particular case, Honduras's argument is all the more groundless as Nicaragua's Application requests the Court to adjudge and declare:

— that the acts and omissions of Honduras constitute breaches of its obligations under international law;
— that Honduras is under a duty to cease and to refrain from all such acts; and
— that it is under an obligation to make reparations for all injury caused to Nicaragua by these breaches.

If the concept of legal dispute "by nature" has any meaning at all, it is obviously here: these requests exactly reflect the different categories of "legal dispute" listed in Article 36, paragraph 2, of the Statute of the Court, i.e.:

(a) the interpretation of treaties;
(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of international obligation;
(d) the nature or extent of the reparation to be made for the breach of an international obligation.

325. Regarding the more precise argument based on the political motives or objectives that Honduras attributes to Nicaragua, it should be pointed out that, according to its own settled jurisprudence, the Court does not deal with the reasons underlying a State's decision to submit a particular dispute to the Court. This position was expressed with particular clarity in the Advisory Opinion concerning the *Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter)*:

> "It has nevertheless been contended that the question put must be regarded as a political one and that, for this reason, it falls outside the jurisdiction of the Court . . . the Court is not concerned with the motives which may have inspired this request . . ." (*I.C.J. Reports 1947-1948*, p. 61; see also *Competence of the General Assembly for the Admission of a State to the United Nations, I.C.J. Reports 1950*, p. 61.)

326. This position of principle was reaffirmed in the Opinion of 20 December 1980. Pursuant to arguments developed during the Assembly of the WHO prior to the Court's opinion being sought, the Court was requested "to decline to reply to the present request by reason of its allegedly political character". The Court replied:

> "In none of the written and oral statements submitted to the Court, on the other hand, has this contention been advanced and such a contention would, in any case, have run counter to the settled jurisprudence of the Court. That jurisprudence establishes that if, as in the present case, a question submitted in a request is one that otherwise falls within the normal exercise of its judicial process, the Court has not to deal with the motives which may have inspired the request (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, pp. 61-62; *Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950*, pp. 6-7; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962*, p. 155). Indeed, in situations in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate, especially when these may include the interpretation of its constitution." (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, I.C.J. Reports 1980*, p. 87.)

Similarly, in the *Northern Cameroons* case, the Court did not uphold the United Kingdom's arguments about the motives attributed to the applicant State (cf. *I.C.J. Reports 1963*, pp. 261-265, 281-284).

327. Although the Court does not inquire into the motives underlying an application, it may be of some interest to consider one of the features on which Honduras relies in order to denounce the alleged political motives of the Government of Nicaragua. According to Honduras, the purported artificiality of the Application stems principally from the fact that it is indissociable from the Judgment pronounced by the Court on 27 June 1986 in the dispute between Nicaragua and the United States (Memorial, pp. 11, 13, 33 *et*

seq., 34 etc., *supra*). Honduras reaches this conclusion based on "the short period of time that has elapsed since the Judgment was pronounced and the Application was deposited" (*ibid.*, p. 33, *supra*), and on the fact that "a third State, the United States of America, is also repeatedly referred to in the Application" (*ibid.*, p. 33, *supra*).

328. Nicaragua does not claim that the two cases are completely independent of one another; quite the contrary. Moreover the Judgment of 27 June 1986 clearly establishes a connection. As Honduras remarks, it contains several references to facts concerning the relationship between Honduras and Nicaragua (*ibid.*, pp. 33, 35 *et seq.*, *supra*). But, contrary to Honduras's conclusion, there is nothing inappropriate or "artificial" about this connection, and *a fortiori*, nothing that should induce the Court to declare the Application inadmissible.

329. First, there is no reason why the *de facto* and *de jure* considerations, carefully investigated by the Court (see *I.C.J. Reports 1986*, pp. 24 *et seq.*, pp. 38 *et seq.*) and found valid in June 1986, should no longer be valid today. Moreover, it is a basic principle of international law that States must respect the rules thereof, independently of any jurisdictional decision.

330. Second, the 1986 Judgment as such is not applicable to Honduras; as noted by Honduras itself, that Judgment is valid only with respect to the "activities of the Government of the United States in relation to Nicaragua" (Memorial, p. 15, *supra*). In accordance with the provisions of Article 59 of the Statute of the Court, it "has no binding force except between the parties and in respect of that particular case".

331. Third, it is worth noting that in the *Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility*, the Court, though fully aware of the larger situation in Central America that constituted the backdrop of the bilateral dispute submitted to it, in no way refused to exercise its jurisdiction (*I.C.J. Reports 1984*, pp. 430-431, 440-441).

332. The situation is in all respects similar in the present instance: there is on the one hand a tense general situation, and on the other hand, a certain number of bilateral disputes — either between States of the region and outside States, as was the case with the dispute submitted to the Court by Nicaragua in 1984 — or between States of the same region, as in the case of the present dispute. Let it suffice to say here that the two categories of dispute are clearly distinct (cf. the separate opinions of Judge Ruda, *I.C.J. Reports 1984*, p. 457, and Judge Sette-Camara, *I.C.J. Reports 1986*, p. 198) and may not be joined.

333. Along the same lines, Honduras opposes any examination of the merits of this case because it claims the Court is not in a position to express a view on all the aspects of what is allegedly a global dispute, both regarding the State concerned (cf. Memorial, pp. 20, 33, 34, 36-37, 39, 48, etc., *supra*) and regarding the various aspects involved — political, economic, military, etc. (cf. *ibid.*, pp. 27 *et seq.*, pp. 44 *et seq.*, *supra*). It also contends that the Court is not equipped to resolve these various problems effectively (*ibid.*, pp. 45, 47-48, *supra*).

334. It has said too much or too little. Contrary to what Honduras implies, the Court cannot and should not lose interest in the general political, economic and social context of the applications made to it, although this context is never the actual subject of a dispute. (Cf. *Free Zones*, Order of 7 June 1932, *P.C.I.J., Series A/B, No. 46*, p. 162; *Competence of the ILO, P.C.I.J., Series B, No. 13*, p. 23.) At the same time, the existence of a larger context, whatever its nature may be, is never an obstacle to the Court's expressing a judgment as to the merits of the case submitted to it. In the case concerning *United States*

Diplomatic and Consular Staff in Tehran, the Iranian Government drew the Court's attention to the fact that the dispute that the United States had submitted to it was only a marginal and secondary aspect of a larger conflict from which it could not be dissociated. On two occasions, the Court firmly rejected this argument:

> "no provision of the Statute or Rules contemplates that the Court should decline to take cognizance of one aspect of a dispute merely because that dispute has other aspects, however important." (*I.C.J. Reports 1979*, p. 15; cf. also *I.C.J. Reports 1980*, pp. 19-20.)

335. Subsequently, the United States had occasion to make a similar argument:

> "[t]he allegations of the Government of Nicaragua comprise but one of the complex of interrelated political, social, economic and security matters that confront the Central American region" (*Military and Paramilitary Activities in and against Nicaragua, Request for the Indication of Provisional Measures, I.C.J. Reports 1984*, p. 18; *Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 439).

In response, the Court merely referred back to its Judgment of 24 May 1980, from which it reproduced the most significant extract (see *supra*). The same principle applies to the present case particularly as, in the case brought by Nicaragua against the United States, the Court clearly accepted that "the subject matter of the dispute" submitted to it also formed "part of wider issues affecting Central America" (*I.C.J. Reports 1986*, p. 22).

336. Of course, if other States consider that their "interest(s) of a legal nature" could be affected by the judgment of the Court in this case, they "are free to institute separate proceedings, or to employ the procedure of intervention" (*Military and Paramilitary Activities in and against Nicaragua, Jurisdiction and Admissibility, I.C.J. Reports 1984*, p. 431; cf. also p. 425). They are, moreover, in a position to do so, since, in accordance with the provisions of Article 42 of the Rules of Court, the Registrar transmitted a copy of the Application to all Members of the United Nations and other States entitled to appear before the Court.

337. Notwithstanding the claim of Honduras that the dispute brought before the Court would not lend itself to a bilateral solution, which has already been examined, it is clear that the present dispute has the characteristics of a "legal dispute" within the meaning of Article 36 of the Statute. In accordance with the famous definition given by the Permanent Court: "A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons." (*Mavrommatis Palestine Concessions, Preliminary Objections, P.C.I.J., Series A, No. 2*, p. 11.) Nicaragua's Application to the Court of 25 July 1986 concerns a dispute which tallies with that definition in every possible way; in the Application Nicaragua has listed the categories of acts which it attributes to Honduras — giving precise examples — along with the rules of international law with which these acts do not conform. Honduras has stated that it contests that these acts occurred, the interpretation of these acts, and whether they are in breach of the rules of law currently in force. There is thus, quite obviously, a "legal dispute" which the Court is competent to hear, and the alleged inadmissibility of the Application cannot be sustained, since "there is no dispute which States entitled to appear before the Court cannot refer to it" (*Rights of Minorities in Upper Silesia (Minority Schools), P.C.I.J., Series A, No. 15*, p. 22 prec.).

PART V. SUBMISSIONS

A. On the basis of the foregoing facts and arguments the Government of Nicaragua respectfully asks the Court to adjudge and declare that:

1. For the reasons set forth in this Counter-Memorial the purported modifications of the Honduran declaration dated 20 February 1960, contained in the "Declaration" dated 22 May 1986, are invalid and consequently the "reservations" invoked by Honduras in its Memorial are without legal effect.

2. Alternatively, in case the Court finds that the modifications of the Honduran "Declaration" dated 22 May 1986 are valid, such modifications cannot be invoked as against Nicaragua because on the facts Nicaragua did not receive reasonable notice thereof.

3. Without prejudice to the foregoing submissions, the "reservations" invoked by Honduras are not applicable in any event in the circumstances of the present case: thus —

(a) the dispute to which the Application of Nicaragua relates is not the subject of any agreement by the Parties to resort to other means for the pacific settlement of disputes; and, in particular, neither the Contadora process nor the provisions of the Pact of Bogotá constitute the "other means" to which the pertinent reservation refers;

(b) the dispute to which the Application of Nicaragua relates is not a dispute "relating to facts or situations originating in armed conflicts or acts of a similar nature which may affect the territory of the Republic of Honduras, and in which it may find itself involved directly or indirectly", and, in the alternative, the "reservation" in question does not possess an exclusively preliminary character and therefore the issue of its application is postponed for determination at the stage of the merits.

4. The "reservations" invoked by Honduras are not applicable in any event to the provisions of Article XXXI of the Pact of Bogotá, which provides an independent basis of jurisdiction within the framework of Article 36, paragraph 1, of the Statute of the Court.

5. The application of the provisions of Article XXXI of the pact of Bogotá is not subject either to the conciliation procedure referred to in Article XXXII of the Pact, exhaustion of which is a condition of recourse to the Court exclusively within the context of Article XXXII, or to the condition of an agreement upon an arbitral procedure which relates exclusively to Article XXXII.

6. The grounds of inadmissibility of the Application alleged to derive from the provisions of Articles II and IV of the Pact of Bogotá have no legal basis.

7. All the other grounds of inadmissibility alleged in the Honduran Memorial have no legal basis and must be rejected.

B. As a consequence of these conclusions the Government of Nicaragua respectfully asks the Court to adjudge and declare that:

1. The Court is competent in respect of the matters raised in the Application submitted by the Government of Nicaragua on 28 July 1986.

2. The competence of the Court exists: by virtue of the Honduran declaration dated 20 February 1960 accepting the jurisdiction of the Court in conformity with the provisions of Article 36, paragraph 2, of the Statute of the Court; *or* (in case the declaration of 1960 has been validly modified) the Honduran declaration of 1960 as modified by the declaration dated 22 May 1986, and the Nicaraguan declaration dated 24 September 1929; *and/or* by virtue of the provisions of Article XXXI of the Pact of Bogotá and Article 36, paragraph 1, of the Statute of the Court.

3. The Application of Nicaragua is admissible.

C. For these reasons the Government of Nicaragua respectfully asks the Court to declare that it has jurisdiction or, alternatively, to reserve any question which does not possess an exclusively preliminary character for decision at the stage of the merits.

D. In respect of all questions of fact referred to in the Memorial of Honduras not expressly considered in the present *Counter-Memorial*, the Government of Nicaragua reserves its position.

This original copy
of the Counter-Memorial
is certified on behalf of
the Government of Nicaragua.

(Signed) Ambassador Carlos ARGUELLO G.,
Agent of the Republic of Nicaragua.

22 June 1987.

Volume II

ANNEXES TO THE COUNTER-MEMORIAL OF NICARAGUA

Annex 1

DICTIONARY OF INTERNATIONAL RELATIONS TERMS, UNITED STATES DEPARTMENT OF STATE LIBRARY, 1987

Contras: Shortened form of the word "countrarevolucionarios" (counter-revolutionaries), the term the Sandinista régime in Nicaragua uses for the guerrilla forces fighting against them[1]. The Contras comprise former members of the Somozist National Guard, dissident right-wing former Sandinistas, and the Miskito Indian minority; each of these forces operates independently[2]. The Contras operate from bases in Honduras and Costa Rica, and receive political and material support from the United States[3]. There have been recurrent armed clashes between Sandinista government troops and the rebels since March 1982[4].

See also: Boland Amendment; Caraballeda Declaration; CONDECA; Contadora Group; Kissinger Commission; Lima Group; Linowitz Report; Reagan Doctrine.

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[1] Following six months of civil war, which resulted in the overthrow of President Anastasio Somoza, the Sandinista National Liberation Front came into power in July 1979. See Forrest D. Colburn, "Nicaragua Under Siege", *Current History*, Mar. 1985, p. 108.

[2] *Keesing's* (CE-5) (1983), pp. 32305-32307. See also Richard L. Millett, "Nicaragua's Frustrated Revolution", *Current History*, Jan. 1986, pp. 5-39.

[3] The Reagan Administration has backed the *Contras* by various means, including joint manœuvres by the US with the Honduran Army, fleet exercises off the Nicaraguan coast, the secret mining of Nicaraguan harbors and military supplies. In December 1982, however, the Boland amendment became law, terminating US aid to the Contras for the following two years. Details are given in *Keesing's* (CE-5) (1983), pp. 32486-32493. In January 1985 President Reagan announced that the United States would boycott the proceedings of the International Court of Justice on Nicaragua's suit alleging US aggression. *See Facts on File* (CE-3) (1985), p. 45. On May 1, 1985, the Reagan Administration imposed a trade embargo against Nicaragua. For a discussion see the *Economist*, June 29, 1985, pp. 75-76. On August 1, 1985, Congress, as part of the fiscal 1986 foreign aid appropriation, provided $27 million in non-lethal aid for the Contras, to be monitored by the National Security Council and administered by the CIA. See the *Washington Post*, Aug. 4, 1985, p. A5. On June 25, 1986, in response to the President's request, the House of Representatives authorized the resumption of US military aid to the Contras after September 1, 1986, as part of a $100 million military and non-military aid package. See Peter Osterlund, "Reagan Persistence, Compromise Won the Day for Contra Aid", *Christian Science Monitor*, June 27, 1986, p. 36. The Soviet Union has been the chief arms supplier to the Sandinista régime. See Richard L. Millett, "Nicaragua's Frustrated Revolution", *Current History*, Jan. 1986, p. 5.

[4] *Keesing's* (CE-5) (1983), pp. 32302-32306.

Annex 2

"CONTRA PRESENCE IN HONDURAS", *NEW YORK TIMES*, 18 APRIL 1986

[Not reproduced]

Annex 3

Interview and News Conference Given by President Jose Azcona, Tegucigalpa Cadena Audio Video and Radio America, 10 December 1986, Printed in *FBIS*, 11 December 1986

Azcona Reviews Nicaragua Incursion, US Aid

[Interview with President Jose Azcona by David Romero; date and place not given — recorded]

[Text] [Azcona] The truth is that there is no war. What we experienced was an invasion by Nicaragua. The Nicaraguans crossed into Honduras through El Espanol Valley, Maquingales, Las Mieles, in that area, and established positions. They even dislodged small Honduran detachments stationed in that area. This happened 8 to 10 days ago. The intensity of this operation was greater than the one that occurred in March.

In the face of this situation the Honduran Foreign Ministry sent protest notes to the Nicaraguan Foreign Ministry. These protest notes went unheard. On Saturday morning, I contacted the President of Nicaragua to ask him to withdraw the Nicaraguan troops from Honduran territory and said that if the withdrawal was not ordered we would be forced to eject them.

On Thursday, a confrontation was reported in the area of Las Mieles. At that time, three Honduran soldiers were wounded and two others were reported missing. One of the soldiers has been found, but the other one is still in the hands of the Sandinists, in the hands of the EPS. The President of Nicaragua denied the charge that there were Nicaraguan troops in the area of Las Mieles, but he did admit that the troops could be to the east of that area. In the face of this denial, we decided that something had to be done to force them to respect our territory, and that is why on Saturday afternoon several planes attacked several positions in that area.

Since we received no information regarding the Nicaraguan withdrawal from our territory, on Sunday morning there was another attack, this time stronger and better organized than the Saturday attack. We also began the operations to transfer infantry troops to the area. This was done with helicopters.

[Romero] Mr. President, the Nicaraguan Government has accused your Government of bombing positions within Nicaragua. Their television station showed clips showing that Nicaraguan territory was attacked.

[Azcona] No. This . . . no . . . we can . . . We have the disposition [disposicion] of denying that because it is not true. We have gone . . . [changes thought] have been the object of provocations for several days by the Nicaraguan forces. In that area there are nests of artillery that have a range of 21 km and they are set 3 or 4 km from the border. Since this artillery has a 21-km range and is located 3 or 4 km from the border, it means that they can hit targets 16 km into our territory. That is a provocation. They should remove all that artillery from that area; move it back to a distance that if they fire a shell it will not cross the border.

A few days ago a cistern truck was hit by one of their grenades and destroyed. This happened in the area between Cifuentes and Trojes. We have more than 1,000 Honduran families who have been displaced because of this occupation, and we will not allow our territory to be occupied by anyone. We do not care if Nicaragua has 300,000 soldiers or whether they use their whole budget to arm them. This is psychotic attitude, it is madness. We are not going to use all our budget to arm the country, but with what we have we will repel any aggression that we may experience, and, the Army has the constitutional duty to protect our territorial integrity. The Army will do its duty at all costs.

[Romero] The Nicaraguan Government claims their military mobilization on their side of the border is due to the fact that Honduras is lending Honduran territory for attacks by the Nicaraguan counterrevolutionaries.

[Azcona] We are not going to launch any attack on Nicaragua. We have said this over and over again. The Nicaraguan problem, the problem of the counterrevolutionaries and that of the refugees, which we are enduring, is to be blamed on the Sandinist Government. Let them see how they resolve their domestic affairs and leave us alone. If the Sandinist Government were a democratic government like the Honduran Government, there would be no counterrevolutionaries and we would not have 80,000 Nicaraguan refugees here who are creating great problems for us in addition to the problems we already have.

[Romero] Mr. President, Nicaragua has proposed that an international UN commission be sent to supervise the lengthy Nicaraguan-Honduran border. Is your Government prepared to accept that proposal?

[Azcona] What we want is for Nicaragua to comply with the commitment it made with the OAS in 1979 so that there may be peace in Nicaragua and we may all live in peace. Here in Honduras we live in total peace. We have no political prisoners, we have no political exiles, there are no counterrev . . . [word not finished, changes thought] there are no armed Hondurans attacking the government of a neighbouring country. In other words, this is the best evidence that reason is on our side. When a country has counterrevolutionaries, when a country has so many refugees in neighbouring countries, there is something wrong in that country. When something is wrong in a country, then the first people to be blamed are those who are leading that country, in this case, the Sandinist Front, which is the party, the political group, in the government.

[Romero] Your Government's refusal to accept UN or OAS supervision on the border could be interpreted as an effort to hide something from the international community or from these very important organizations that watch for peace in the world.

[Azcona] We are open to everyone here. Journalists come here. Honduran papers have even published communiques from the Sandinist government. I would like to see if Nicaragua would allow the publication of Honduran Government communiques. I don't think so. This is the difference between a democratic government, a country that lives in democracy, and a country that lives in oppression, under a dictatorial government.

[Romero] Mr. President, is there the possibility, or are diplomatic actions being adopted alongside the military actions of recent days, to consolidate peace or at least to avoid more clashes in this area?

[Azcona] We don't want war with anyone. We are not a warlike country. We are a peaceful country. What we want is respect toward our territorial integrity and for the Nicaraguans of the EPS who are on our side of the border to leave immediately, because otherwise we will have to make an effort, regardless of how great it may be, and expel them.

[Romero] Does this mean that there is the possibility that there will be new clashes to expel these elements that the Honduran Government says are still in Nicaraguan [as heard] territory?

[Azcona] Our troops are advancing already. Our infantry troops have been mobilized to clean up that area. If they do not withdraw, there will be confrontations within our territory. The Honduran soldiers have received strict orders to stay within our border and not step a single inch into Nicaraguan territory. However, within our territory we must protect our rights.

[Romero] Could we know about mobilization capabilities or for how long this search by the Honduran Army could last?

[Azcona] I believe that the area is a difficult one. Mobilizations have to be carried out by helicopter. On the Nicaraguan side it is different because there are roads that reach that area. We have to do it by air, by helicopter, and this takes time. We expect that the area will have been searched in 2 or 3 days. Let's hope that by then all Nicaraguans who are inside will be out, because otherwise there will necessarily be confrontations, and they would take place inside our territory. This would be very regrettable. I ask the Nicaraguan Government, as I asked President Ortega on Saturday, to pull out all the armed men they have sent inside our country.

[Romero] Were there Honduran Army casualties this past weekend?

[Azcona] No, because this was a confrontation with the Honduran Air Force and, fortunately, in spite of heavy anti-aircraft and missile fire, none of our planes was hit, and they all returned to their bases safely.

[Romero] Mr. President: You — the Honduran Government — virtually said that the Contadora Group [efforts] collapsed because of an apparent lack of good will on the part of the two Governments — the Honduran and the Nicaraguan Governments — to resolve the conflict through peaceful means. Can that view and the recent clashes be considered the beginning of a prolonged war in Central America?

[Azcona] No. The Contadora Group [efforts] failed because at the beginning the group lacked the strength to make Nicaragua sign the document. We were willing to sign it on various occasions.

The Contadora Group was too soft, conciliatory and lenient with the Nicaraguan Government. This prevented the signing of the document, which several times we were ready to sign. The Contadora Group lacked the determination to pressure [Nicaragua]. I believe they acted in very good faith and selflessly. We have acknowledged this and we appreciate it. However, a greater determination to pressure the Nicaraguan Government into signing the document and abiding by its provisions was lacking. Thus, a good opportunity to resolve this problem was lost.

[Romero] The Nicaraguan Government has accused your Government — actually, the US Government — of intervening in this affair because the US Government assisted the Honduran Armed Forces troop transport operation.

[Azcona] In that case we could say that the Soviet Government is intervening also, because Nicaragua does not manufacture arms, and Nicaragua is saturated with weapons. Nicaragua has 10, 20, 30, or 50 times more weapons than Honduras. Therefore, the Soviet Union is also intervening in Central America; and to a greater extent than the United States is.

We reject that accusation because Honduras is a sovereign country that requested assistance to move its troops to that area because we do not have transport helicopters. And we will request that assistance as many times as is necessary, whether a third country likes it or not. The security of our country and people is our concern.

We know that Nicaragua is mounting a large-scale campaign to discredit the Honduran Government. However, I want to tell the Nicaraguan Government and the world that Honduras does not have money to spend on publicity. Honduras's money goes into health and education, and to feed its population. Thank God, and despite all the problems we have, Honduras is not facing the problems that people in Nicaragua are facing. This is because we are not spending the money we need for our people's basic needs on publicity or arms.

[Romero] What was the cost of the US assistance to Honduras?

[Azcona] There was no cost. A military assistance treaty was signed in 1954. Based on this we requested the assistance because we did not have helicopters. If we had transport helicopters we would have used our own. Initially, we thought we would not need assistance because we believed that our aircraft could transport the troops to nearby strips, from where we could move them on small helicopters. However, we realized this could not be done, and we requested assistance exclusively for transportation.

[Romero] In convoking the 1954 treaty and in the event of the outbreak of war — though we hope this will not happen — can Honduras continue to convoke that treaty that provides US military assistance?

[Azcona] Our duty as president of Honduras and the constitutional duty of the Armed Forces is to ensure that the national territory is respected. We will make sure it is respected in so far as we can. Therefore, the important thing is that, instead of mounting campaigns against Honduras, the EPS soldiers will leave our country. If they do not, we will be obliged to expel them.

[Romero] International dispatches have reported that there is an agreement between the Honduran and US Governments to expel the *contras* from Honduran territory.

[Azcona] We have said time and again that the *contra* phenomenon is not the Hondurans' fault. The *contra* phenomenon is the fault of a government that violates Nicaraguan rights. I told Ortega this to his face in Esquipulas. I have said this to him and to all of them many times: Open political options to all sectors of Nicaraguan society and this will ease the pressure. When a government does not allow others to exercise power or aspire to power, violent situations ensue. Why don't we have violence in Honduras? Because the Honduran president was elected for a 4-year term, after which he will turn over power to whoever the Honduran people elect, no matter what party that person is from. There is no pressure because all those who have political aspirations and believe that they have the people's support have the opportunity to vie for power.

[Romero] Is it true that — as it was announced by the White House, in Washington — an agreement between your Government and the US Government exists to expel the *contras*, which are estimated to number 20,000 armed men, and transfer them to an undetermined place?

[Azcona] We have said — and we maintain — that the counterrevolutionaries must fight for their country's freedom in Nicaragua. Those problems must be resolved between Nicaraguans. However, we have made no such demand [emplazamiento]. Some *contras* are in Nicaragua, others go in and out of Honduras. It is very difficult for us to protect that border. We have said that many times. It costs a lot of money to mobilize a single battalion. It must be mobilized by helicopter. Let us say that we have to protect the entire border to cover the Sandinists' backs. We would not be able to do that with less than 30,000-40,000 men, and that would take an enormous chunk out of budget. We will not allot those funds for that purpose. We have other, more important needs, including improving our people's health and education and creating sources of employment.

[Romero] President Azcona is showing a map here. Eng. Azcona, could you explain what these areas marked here really mean?

[Azcona] No, this is a map of Honduras that the General Highway Directorate gave me; it shows where certain highway projects will be carried out, here in the northern, central and southern areas. No, this has nothing to do with the matter at hand. I only brought it to explain the small area of our territory touching Nicaraguan territory that has been occupied by the Sandinist forces. That area was the target of an aerial attack. They will continue to be targets of aerial attacks should they not withdraw from our territory.

[Romero] There are reports stating that there are still 2,500 Sandinist soldiers in Honduran territory. Is that true?

[Azcona] We estimate that there were more than 3,000 men of various units that they call BLI [Battalions for Unconventional Warfare], light infantry brigades, and other border-vigilance forces. I guess that most of those troops should have left our territory. Otherwise, we will continue to exert pressure. The number of forces that we have deployed to that area do not even compare to the troops they sent there inside our territory and near that territory.

[Romero] Why was that border area not guarded? This is an exaggeration; why were 3,000 men able to enter Honduran territory? Was there no vigilance in that area?

[Azcona] We had 15-men detachments at each point there. Our Armed Forces are limited in number; you are well aware of this. We barely have 16 battalions. I can tell you that the concentration of Nicaraguan forces in only that small area is nearly the size of our total forces in all of Honduras. That is, imagine that we in Honduras with the four branches of the Armed Forces, including the police, do not even have 30,000 men, and in the EPS, it is said, that Nicaragua has 180,000 men and 100,000 plus men in the militia. In other words, they are 10 times as large as our Armed Forces. This holds true in a country with fewer inhabitants than our country.

[Romero] [Words indistinct] means that a clash with Nicaragua would have disastrous consequences?

[Azcona] Well, in an open war, we would request the aid of the United States or any other friendly country, because, I repeat, we are not involved in an arms race nor do we own an arsenal such as the one that Nicaragua has, which is valued between $2 and $3 billion; that is an absurd fact for a small country. Our arsenal is not even 1/100th of their's.

[Romero] Mr. President, does this mean that should there be a confrontation — and we do not wish this to be true — should there be an open war, would it be possible, then, that US troops would come to aid the Honduran Army because of the limited number of troops in comparison to Nicaragua?

[Azcona] I believe that we would be forced to resort to that aid to defend our territory, and inside Honduras, not to invade Nicaragua. I have repeatedly stated that Honduras does not wish to invade Nicaragua nor will it lend its territory to the troops of any foreign power to (?invade) Nicaragua.

However, that is not the same as having to defend ourselves. If we are attacked inside our territory, we will accept the help of anyone offering us help. Of course, we have an agreement with the United States. We can count on that aid at any time.

[Romero] One more question, Mr. President: Since the beginning, your Government has been involved in serious international charges. Specifically, it has been said that our territory is being used to supply with arms the insurgent Nicaraguan groups that are allegedly in Honduran territory. This has given a very weak international image to your Government.

[Azcona] No, that is not true. Democratic governments throughout the world have already understood our position. That is completely false. What Radio Moscow and Radio Havana report or what stations managed by the international left report is one thing, but the truth is that reality cannot be concealed for long.

Nicaragua is a country where all freedoms and rights are being violated; where the entire economy is being wasted in arms; where they have 300,000 men [in the Armed Forces]. On the other side is Honduras, a country where democracy is respected; where citizens rights are being respected, where there are no political prisoners, no political exiles, where we do not have even one person as a refugee in another country; where nobody is persecuted for political reasons. Our Armed Forces are professional, but reduced in size. We spend a small percentage of our budget to maintain our Armed Forces. The world understands this, and the situation has been changing quickly.

Of course, we cannot expect understanding from socialist countries, but we do expect understanding from democratic countries, and we are indeed receiving their support and they will continue to support us. I am referring to Japan, the FRG, Italy, Spain, France, England, the Netherlands and the Scandinavian countries.

Of course, as always, the intense propaganda carried out by the Sandinist regime has to reap some dividends. However, as the president of Honduras, I cannot irresponsibly spend the Honduran people's money in waging an international campaign to voice our truths. I am subject to a budget approved by the National Congress in which you can see a small budget for the Foreign Ministry. We do not have funds to carry out publicity campaigns throughout the world to explain our reality.

[Romero] The national and international press has been complaining because the Honduran Government, unlike Nicaragua, has not allowed them to reach the site of the conflict to get an on-site report of what really happened at the border area.

[Azcona] Well, our Armed Forces offered to transport newsmen to that area. Of course, what they will encounter is a rural area, because we do not have large towns there. However, we can take them to the towns that have been looted by the EPS.

[Romero] In view of this delicate situation that we are experiencing in the Central American area, specifically in these two brother countries, what would be your message, Mr. President?

[Azcona] Well, the Sandinist government is the one experiencing a delicate situation as a result of its attempt to continue oppressing its people and consolidating itself in power — that is, trying to establish absolute power. We have no internal problems. The people here realize perfectly well that Honduras has been attacked and the Honduran Government and Armed Forces have acted in defense of national interests and in keeping with the Republic's Constitution.

Therefore, we do not have problems. We do have problems, but not exactly that kind of problem. We have other problems: We have problems with health, education and housing. Those are the problems we are trying to resolve.

Azcona Discusses Incursion with News Media

[News conference given by President José Azcona in the Room of Mirrors of the Presidential House — live]

[Text] [Moderator] President José Azcona will now hold a news conference. I want to ask you to identify your organization and yourselves.

[Azcona] I will gladly reply to your questions regarding the situation with our sister Republic of Nicaragua in the border area. I want you to ask specific questions. I hope that you will publish my replies objectively.

[Reporter] [Question indistinct]

[Azcona] Right after our aerial attacks on EPS positions on our side of the border, we learned that they began to retreat toward their country. As for the help being offered by the Government of President [José] Napoleón Duarte, I wish to say that Honduras is immensely grateful and [word indistinct] with the solidarity shown by the Salvadoran Government.

[Reporter] [Question indistinct]

[Azcona] The Honduran Army has not sustained casualties except for one person missing since last week when three individuals and three soldiers were wounded. Two soldiers disappeared: one of them was found Sunday. I think it was Sunday. The other one, I believe, is still in the hands of the enemy. No casualties have been reported yet.

[Reporter] Did Sandinists enter Honduran territory?

[Azcona] [Words indistinct] 7 or 8 km. There is an area along the border where the border curves sharply. Through various points in that area, they entered 3 to 4 km into Honduran territory. Farther away to the west, there were places where they entered approximately 8 km inside our territory.

[Reporter] The Sandinists claim that Honduras attacked three sites inside Nicaraguan territory. What is your reply to this?

[Azcona] We bombed positions occupied by EPS forces inside Honduras. I also wish to say that there are very heavy deployments going on near the Honduran border area, including artillery and tanks that could have been very easy targets for our Air Force.

However, we did not attack them although they — with the mere presence of long-range artillery near the border area — are already threatening our territory [second break in reception] inside Nicaraguan territory, although I do think that it prompted a Honduran protest, because they maintain artillery with a range of over 20 km at a location 6 km from our border. This means that when fired they would have a reach of 16 km [as heard] inside our territory.

[Reporter] Could we say that there are two armies concentrated there facing each other and that something could happen?

[Azcona] No, there is no army there, because we only transported two battalions . . . [Azcona corrects himself] that is one battalion. Actually, the large force near the border is made up of 30,000 Nicaraguan men. We have deployed small contingents from helicopters. We believe that we will not need to deploy other troops because the Sandinist government must realize that should there be an aggression against Honduras, the entire Honduran people will stand behind their government and Armed Forces, as they have expressed in telegrams that we are receiving from various sectors: the transportation sector, political parties, peasant, labor and business sectors, municipal organizations and so on.

[Reporter] [Words indistinct] regarding this conflict before the United Nations and other organizations?

[Azcona] With regard to the United Nations, it appears that the Nicaraguan Government has proposed filing a report before the UN Security Council. We are ready to do this. Our ambassador at the United Nations, Mr. Martinez Osorio, already has all the information necessary to answer any accusation that may be made at that Organization.

Regarding embassies, all of our ambassadors have already received instructions to report the truth of the situation. We spoke to our foreign minister, who was in the Netherlands yesterday, so he can make contacts with various governments, particularly those of the EEC, to brief them on the situation. We are doing this so that these governments are not targets of Sandinist government misinformation.

[Moderator] Julio Armando Valdez of HRN [Voz de Honduras Network] has a question.

[Valdez] [Words indistinct] do you have confidence in Contadora, the United Nations, and the OAS?

[Azcona] Yes, but we must not play with words. No one has spoken about a hunger march. It was said that displaced people are coming to Tegucigalpa. We will help them because it is the Government's duty to do so. We will also request help from abroad, particularly from the US Government, to help us handle that situation. However, it will not necessarily be a hunger march. If that happens, it will only confirm what we have said: that the area was occupied by Sandinist forces. The people coming to Tegucigalpa will be our best evidence of that.

[Reporter] What kind of relations has your Government established [words indistinct] to resolve this problem?

[Azcona] The Honduran Government has a reciprocal military assistance agreement, signed in 1954, still in effect. Several protocols have been added to it that deal with improvements of airports, the treatment of US technicians in Honduras, and other things. Three of four protocols were signed. They were approved by the National Congress and the US Congress, and they are in effect. Therefore, there is no need for new agreements. There are documents signed by both parties in which the United States has pledged to help us in the event of an aggression by any country ruled by a communist régime.

[Reporter] Speaking of agreements with the United States: Is there any understanding with the United States that will prevent, in the event of a *contra* defeat, the *contras* from being trapped in Honduras, thus constituting a greater burden for your country?

[Azcona] We have discussed this with the United States. However, its officials have said that there is no need to think about this because the counterrevolutionaries who go into Nicaragua will stay there. However, it has been one of our concerns and we have told the United States about it.

[Reporter] Are you exerting pressure for [words indistinct] there?

[Azcona] No. We are not exerting pressure. We have said over and over that the counterrevolutionaries' raison d'être is to fight for the liberation of Nicaragua in Nicaragua. That is our desire: that they be in Nicaragua. The counterrevolutionary forces were established for that purpose.

[Moderator] You are smiling a lot, Stein [not further identified]. I want to ask you to please give all the members of the press an opportunity [words indistinct].

[Reporter] [Question indistinct]

[Azcona] We believe that there were approximately 2,500 Sandinists inside Honduran territory on Friday and Saturday. We presume that there are fewer of them now. We will continue to bomb the positions they are occupying. We will also use our forces, our Army, to expel them from the country.

[Reporter] [Question indistinct]

[Azcona] I do not have exact information on that at this time. I believe there are still some troops there.

[Moderator] Roy Arthur of *La Prensa* newspaper has a question.

[Arthur] Mr. President, has the National Security Council, over which you preside, already determined the role of the Nicaraguan rebels, the *contras* in these conflicts?

[Azcona] We have analysed this problem. However, the main point is that our territory was occupied by forces of another country, without Honduras's permission, and the forces had to be removed. Our Constitution establishes that our Armed Forces have to protect the national territory, and this was the point, that those forces had to get out of Honduras. This is why I called Nicaraguan President Ortega on Saturday morning and told him that the Nicaraguan troops had to be taken out of Honduras. Otherwise, there would be problems because we were going to fulfil our duty. The Honduran people were demanding that the Government not allow the presence of Nicaraguan forces in Honduras.

[Moderator] David Romero from Radio America will ask a question.

[Romero] Mr. President, the current situation is appropriate to get the Nicaraguan *contras*, who are allegedly in Honduran territory, out. Moreover, today international news dispatches report that those counterrevolutionaries are willing to leave Honduras.

[Azcona] There are two different things: One is that the *contras* have been going in and out of Honduras and Nicaragua. They have assembled to oust a government. Another is an invasion by a government's regular forces to occupy territory and positions inside the territory of another formally-constituted government. Those are two somewhat different things.

The Nicaraguan Government does not have one valid argument to use — because there are counterrevolutionaries, or anything else — to come and occupy Honduran territory. The Nicaraguan Government is responsible for the counterrevolutionaries and the refugees we have in Honduras. No one else is to be blamed.

If the Nicaraguan Government were democratic and fulfilled its pledge to the OAS; if it gave the Nicaraguan people a possibility or hope of solving their problems through political or peaceful means, I believe that there would not be counterrevolutionaries. Also, there are no Honduran Armed Forces in any neighbouring country trying to topple that government. We do not have refugees or political prisoners. Therefore, we must look for the source of the problem. The problem stems from the lack of freedom in Nicaragua. As long as that situation continues in Nicaragua, it is very likely that there will be counterrevolutionaries inside or outside Nicaragua, political prisoners, and refugees leaving Nicaragua. That is the problem. Solving the problem is exclusively up to the Sandinist government.

[Moderator] [Name indistinct] newspaper *El Tiempo.*

[Reporter] [Words indistinct] the Irangate scandal in Washington could weaken US policy in Central America, to the extent that Honduras may be left alone with the *contra* problem?

[Azcona] We are not alone with that problem. We are not part of that problem. I insist time and again that Nicaragua's problem is not Honduras's. This is the Nicaraguan's problem. Regarding the sale of weapons to Iran through Israel, I do not think that it will have a negative impact on this matter involving Nicaragua.

It is in the interest of the United States that Iran not fall under the USSR sphere of influence. Moreover, it is also in the interest of the United States that penetration of the Soviet bloc in America does not continue.

[Reporter] You said that this could have an impact in terms of US support for the *contras* and that at any given time it could also have an impact on Honduras.

[Azcona] I do not see how this could have an impact on Honduras. As I told you, Honduras does not have domestic problems. We do not need . . . [changes thought] I do not see how it could have an impact. If the *contras* are eliminated, Honduras will not be the only nation to suffer the consequences. It will have an impact on El Salvador, Guatemala, Mexico and ultimately on the United States and Costa Rica as well. It will not have an impact only on Honduras. We do not have any direct problem with the Sandinist government. We do not have any problems, directly or bilaterally. There is a problem in the region caused by the alignment of one country in the area with the Soviet bloc and the ensuing US reaction which does not accept that situation.

[Moderator] Here is reporter Teodoro Diaz. I ask you not to monopolize the news conference and give your colleagues time, too, because the news conference will end soon.

[Diaz] Mr. President, why does your Government not accept that a special UN force watch the border to avoid more conflicts?

[Azcona] A special UN force . . . we accept surveillance in the area, but we are not going to fall into a Sandinist Government trap because what they want is to have a force take care of their backs. That is what they want, in addition to bilateral treaties with Costa Rica and Honduras. They want a security belt, and in this way they can advance on and impose totalitarianism in Nicaragua. We must consider all these things. We are open, there are press representatives from all over the world here who can visit the area, and we are going to take them there. However, of course we are not going to fall into prepared traps, either. What Nicaragua wants — and perhaps that was the main objective of the invasion against Honduras — is to have a force come onto the scene, and then everything will be just fine, the area will be neutralized, and they [not further identified] will be free to do whatever they want.

The important thing here is that the OAS should make Nicaragua comply with the commitments it acquired in 1979, in the sense that Nicaragua would have a system based on a mixed economy, ideological pluralism, press freedom, religious freedom, freedom of association, in sum, all the freedoms to which all the peoples of the world are entitled.

If the Nicaraguan Government really wanted to comply with those commitments, it has an opportunity at the beginning of the year when six political parties representing the civilian opposition in Nicaragua made a clear proposal to the Sandinist Government. So, if they were really sincere, they had a good chance then to accept that initiative. It is exactly the same as when they have been asked to sign the Contadora Document. They have refused to sign it on two or three occasions. When they thought that perhaps it would be good for them, or maybe because the other countries were opposed to it, they hurriedly said they would sign it. However, the document was ready to be signed on three occasions and they refused.

[Moderator] Rafael Castellanos, of Radio Tegucigalpa.

[Castellanos] Mr. President, what will your Government do since Nicaraguan stations are constantly saying that Honduran troops, led by the United States, bombed a Nicaraguan town?

[Azcona] We have repeated this over and over. What is important is that Nicaragua does not allow anything to be said against the Nicaraguan Government, which is an absolutist and totalitarian government. However, here in Honduras, the media is ready to publish reports from Nicaragua. We will see if they — through *Barricada* or *El Nuevo Diario* — will publish our communiqués with the protests that the Honduran Foreign Ministry has filed before the Nicaraguan Foreign Ministry. If they do not allow this, we will not permit the publication of bulletins issued by the Nicaraguan Government, either. We are at a complete total disadvantage with them, as no reporter in Nicaragua dares to say anything against the Sandinist Government or anything that will contradict Nicaragua's position. However, because we live in a demo-cracy here, everyone is free to express himself. Nevertheless, we should also try to be more patriotic and less inclined to help the enemy.

[Reporter] [Words indistinct] expecting a Nicaraguan counterattack after the Honduran Air Force bombings?

[Azcona] I do not believe that it will take place because the only thing we did was exercise our rights. If it did take place, we will be prepared to handle the situation by requesting help from the United States and other friendly countries.

[Moderator] Let us allow [words indistinct] from Radio America to ask a question and then [words indistinct] from HRN [Voz de Honduras Network] to ask the last question.

[Reporter] Daniel Ortega said that he would not respect the border because in his opinion you had [words indistinct] about 80 territorial violations. It seems that they want a permanent presence in this area. Have you declared this area an open war zone with the EPS?

[Azcona] Certainly not. We will not renounce the sovereignty of our territory, not even a square inch. What happened was that there has been an excess of prudence, let's not say of tolerance, to avoid any conflict with Nicaragua. However, the time came when this could not continue. This is why those positions were bombed. Should they enter the territory again they will continue to be bombed or repelled with other types of attack. Ortega said that this was a no-man's-land and that is why the EPS entered that territory. All right, let him enter again. However, he should not complain when his units are bombed and Nicaraguan soldiers are killed.

[Reporter] Can the Honduras-Nicaragua mixed commission, the OAS, or any international organization keep watch on this area to prevent a conflict?

[Azcona] (?Such a measure) would mean deploying 12,000 or 15,000 UN soldiers. I doubt that any one country has enough money for this. We seek something different. We seek to have a commission, formed by UN member countries and friendly to Nicaragua, come to either condemn or support the Sandinist régime.

We are not going to fall into a trap. If we knew that this would really help bring peace in Central America . . . In fact, we already asked for this at the OAS in May when we visited the United States. We went to the OAS and delivered a speech asking the OAS to resume authority in Central America and demand that the Sandinist régime fulfil its 1979 pledge. This pledge was the final blow to dictator Anastasio Somoza and permitted the Sandinists to come to power. Had it not been for this pledge, it would have taken the Sandinists a long time to overthrow Somoza and who knows whether they would have succeeded at all. Opposition against the United States is being voiced now, but we should keep in mind that the Junta of National Reconstruction was proposed by two US ambassadors, Mr. White and Mr. Pezullo. Much has already been said about the United States and continues to be said. The truth is, however, that the OAS and the US Government gave the Sandinists the final push that led to the revolution's success on the condition that they abide by their OAS commitments. This is something which they have not done.

[Reporter] [Words indistinct]

[Azcona] No. I don't think there is going to be a war with Nicaragua. I do not think at all that there will be a war with Nicaragua. You foreign newsmen can clearly see that Honduras is not in a state of war or anything like that. There is calm. All activities are being carried out as usual. It is true that some actions have occurred at the border. We are, however, trying to solve the problem.

[Reporter] Mr. President, excuse me. (?will you) take your struggle inside Nicaragua?

[Azcona] It will depend on the Nicaraguan people's response. No struggle can be excused without the people's support. If the Nicaraguan people back the counterrevolutionaries, and their policy established wherever they pass in Nicaragua proves to be good for the people, as we believe it will be, the *contras* can succeed.

[Reporter] Mr. President, the Nicaraguan Government regards your description of the Sandinist government as dictatorial and a violation of human rights as meddling in Managua domestic affairs.

[Azcona] No. We have not meddled. We are a member of the OAS. We have also suffered the effects of this Nicaraguan system. Therefore, we are entitled to protest. If the Nicaraguans build a wall at the border and it prevents Nicaraguan refugees from entering Honduras, and there is no possibility of any counterrevolutionaries or subversives entering our country, we would be all the happier. But as long as we suffer the effects of this government, we are fully entitled to demand Nicaragua's domestic democratization anywhere we speak.

[Moderator] The last question will be asked by Julio Armando Pacheca.

[Reporter] [Words indistinct] a second diplomatic stage has been initiated in which Nicaragua leads us by 90 percent. What is your Government's strategy?

Annex 4

"PRESIDENT SAYS HE HASN'T EXPELLED CONTRAS", UNITED PRESS INTERNATIONAL, 11 DECEMBER 1986

President Jose Azcona, in a rare recognition of Contra rebel presence in Honduras, said he has not asked the United States to order the Contras back over the border to Nicaragua.

Azcona went on national radio Wednesday to deny reports his Government is trying to expel the US-backed rebels from Honduras. Later, he told reporters Honduras would prefer it if the rebels fought their battles in Nicaragua.

"What we have said and what we do maintain is that the counterrevolutionaries (Contras) should be fighting in Nicaragua for the freedom of their homeland, but we have not made any requests in that regard", Azcona said.

"The Honduran Government is not pressing the United States so that the Contras leave Honduran territory. But it has made known (to the US Government) its concern over the presence of these irregular forces in the country", Azcona said.

Honduran officials have said Nicaraguan soldiers crossed into Honduras last week in an apparent attempt to strike at Contra camps, wounding three Honduran soldiers and capturing two.

On Sunday, Honduran warplanes strafed Nicaraguan troop positions and US-piloted helicopters ferried troops into the area, some 80 miles east of Tegucigalpa to repel the attack.

Managua earlier reported seven of its soldiers were killed in the fighting.

"The Contras are in Nicaragua but enter and exit Honduras because it is very difficult for us to guard that border", he said in a rare recognition of the Contras' presence in the rugged frontier hills.

Tegucigalpa has never officially recognized that up to 15,000 Contras operate out of Honduran base camps.

Azcona told reporters Honduras would continue to fight any Nicaraguan presence in Honduras but said he did not foresee war between the two nations.

"What we are going to do is to continue to bomb the positions they occupy and also employ our army to force them out of the country", Azcona said. However, he said, "I do not believe there will be war with Nicaragua. Not in any way."

In Managua, Nicaraguan President Daniel Ortega called Azcona's statements "highly dangerous" and blamed Honduras for the recent border conflicts.

"Honduras has created the problem by ceding to US Government pressures and allowing the mercenary camps", Ortega said.

"The new philosophy of President Azcona, that of using arms, shows that eventually the Honduran armed forces might bomb Nicaraguan artillery that is in Nicaraguan territory, because the Nicaraguan artillery can reach up to 13 miles inside Honduran territory", he said.

Annex 5

"INTERVIEW WITH PRESIDENT JOSE AZCONA", TEGUCIGALPA VOZ DE HONDURAS, 22 APRIL 1987, PRINTED IN *FBIS*, 28 APRIL 1987

[Not reproduced]

Annex 6

"HONDURAN CONGRESS LEADER SAYS NICARAGUA REBELS SHOULD GO", REUTERS NORTH EUROPEAN SERVICE, 2 MARCH 1986

[Not reproduced]

Annex 7

ARTICLE QUOTING HONDURAN FOREIGN MINISTER LOPEZ CONTRERAS, *EL TIEMPO*, 24 NOVEMBER 1986

[Not reproduced]

Annex 8

LETTER FROM AHPROCAFE TO UNITED STATES CONGRESSMEN, 12 JANUARY 1987

[Not reproduced]

Annex 9

United States Economic and Military Aid to Honduras 1977-1986, from Banana Cases to Contra Bases: A Chronology of United States-Honduran Relations, January 1977 to July 1986, Central American Historical Institute (Washington, D.C., 1986); and "US Said to Link Latin Aid Support for Contras", *New York Times*, 18 May 1987

[Not reproduced]

Annex 10

"Former Army Chief Says CIA Bribed Honduran Politicians", Associated Press, 1 April 1987

[Not reproduced]

Annex 11

"Ousted Chief of Honduran Military Was Hired as US Defense Consultant", *Washington Post*, 10 May 1987

[Not reproduced]

Annex 12

Guasaule Declaration, Joint Communiqué Issued by His Excellency the President of the Republic of Honduras, General Policarpo Paz García, and the Co-ordinator of the National Reconstruction Governing Junta of Nicaragua, Commander of the Revolution Daniel Ortega Saavedra, as a Result of Their Meeting on 13 May 1981 at the Frontier Station of El Guasaule, Nicaragua

[See Memorial of Honduras, Ann. 2, supra*]*

Annex 13

EXAMPLES OF NICARAGUAN PROPOSALS TO HONDURAS

[Spanish texts not reproduced]

A

Embassy of Nicaragua,
Tegucigalpa,
Republic of Honduras.

PROPOSAL FROM THE CHANCELLOR MIGUEL D'ESCOTO TO THE CHANCELLOR EDGARDO PAZ BARNICA

(1) To hold a meeting immediately between the chiefs of the armies of Honduras and Nicaragua in the framework of the Guasaule agreements.

(2) Based on the above-mentioned meeting, to make non-aggression agreements between the Governments of Nicaragua and Honduras.

(3) To establish a system of joint patrols in our common border to prevent activities of armed elements who endanger relations between both countries.

(4) To dismantle the camps of Somocista counter-revolutionary groups in Honduran territory, and cause the withdrawal from the border zone of any kind of concentration of these Somocist elements.

(5) To prevent the installation of any foreign naval base in the Fonseca Gulf without the express agreement of the three States whose sovereignty jointly covers this Gulf.

(6) To undertake systematic bilateral programmes in the political, economic, diplomatic, military and security fields, as well as, cultural social and sports, etc., in order to strengthen relations between both countries, to analyse common problems and to promote peace.

(7) To proceed in an organized manner, with the co-operation of the appropriate international organizations, towards the eventual voluntary repatriation to Nicaragua of those Misquitos who wish to do so.

April 21st 1982.

B

Ministry of Foreign Affairs,
Managua, Nicaragua.

March 15th 1982.

Directorate of Legal Affairs
ACZ/No. 108

Dear Minister,

I have the honour to address myself to Your Excellency, in order to report on the serious situation that now obtains in Central America.

Considering the sincere desire of the Government of Nicaragua to strengthen her bonds with the sister republic of Honduras, we consider it appropriate that a meeting between the Ministers of Foreign Affairs of Honduras and of Nicaragua be held on a date convenient to Your Excellency. It is our belief, that through a frank and fraternal dialogue, it will be possible to achieve a greater understanding between our nations, which will be of clear benefit to the peace and tranquillity to the whole of the long-suffering Central American region.

The acute crisis in which Central America has fallen today, requires from us great maturity and patriotism in order to prevent greater disorder, the first and main victims of which will be the peoples of the region.

We are confident that Your Excellency will positively welcome our invitation to dialogue. I take this opportunity to reiterate to Your Excellency proof of my highest and most distinguished consideration.

Miguel D'ESCOTO BROCKMANN,
Minister for Foreign Affairs.

To the Right Honorable Edgardo Paz Barnica,
Minister of Foreign Affairs,
Tegucigalpa, Honduras.

C

Ministry of Foreign Affairs,
Managua, Nicaragua.

Chancellery
MDB/gm No. 197

August 24th 1982.

Excellency,

As you must be aware, in recent months relations between our two countries have experienced considerable tension, caused by a series of events:

mainly the deterioration of the situation on our common border. This state of affairs puts the peace of Central America at risk, in face of which, my Government is determined not to curtail efforts contributing to the improvement of our mutual relations.

This has always been our desire, which we recently reiterated with the invitation sent by the Co-ordinator of our Government of National Reconstruction, Commander of the Revolution Daniel Ortega Saavedra, to Your Excellency Dr. Roberto Suazo Cordova, President of the Republic of Honduras.

Your Excellency, I believe this to be a most convenient time to recapture the spirit of the agreements reached at the summit meeting of El Guasaule on May 13th 1981, and that of our discussions held during my visit to Tegucigalpa on April 21st of this year. In that sense, with great pleasure, I could receive you in Managua sometime next week, on the 1st, 2nd or 3rd of September, at your convenience.

I am in no doubt, Excellency, that this meeting will bring about highly positive results for the welfare of both our countries.

With my highest consideration and personal regard.

Miguel D'ESCOTO BROCKMANN,
Minister for Foreign Affairs.

The Right Honorable Edgardo Paz Barnica,
Minister of Foreign Affairs,
Tegucigalpa, Honduras.

D

Official letter No. 828-DSM

Tegucigalpa, D.C., September 9th 1982.

Dear Minister,

I have the honour to address myself to Your Excellency, in order to accompany the letter sent by the Constitutional President of the Republic Dr. Roberto Suazo Cordova to the General Co-ordinator of the National Government of Reconstruction of Nicaragua, Commander Daniel Ortega Saavedra.

Likewise, I wish to refer to Your Excellency's telex of the 4th of the present month, in which you reiterate your suggestion that we meet in Managua in order to discuss the present situation between our two countries.

Unexpected circumstances and previous engagements have made it impossible for me to attend the meeting referred to by Your Excellency. However, I believe such meeting could be held as soon as these circumstances permit.

I wish to reiterate to Your Excellency the determination of the Government of Honduras to work for the consolidation of fraternal and respectful relations between our two countries, and the exchange of points of view and criteria conducive to the implementation of the Peace Proposal for Central America formulated by the Government of Honduras on March 23rd last.

Your Excellency should rest assured of our conviction that dialogue is the best way of analysing situations and of solving problems. This conviction springs from our honest interest in the creation of the conditions necessary to establish the bases for a long and lasting understanding between Honduras and Nicaragua.

I take this opportunity to reiterate to Your Excellency, this proof of my highest and most distinguished consideration.

Edgardo PAZ BARNICA,
Minister of Foreign Affairs.

The Right Honorable Dr. Miguel d'Escoto B.,
Minister of Foreign Affairs,
Managua, Nicaragua.

Annex 14

COMMUNICATION FROM THE MINISTERS FOR FOREIGN AFFAIRS OF THE CONTADORA GROUP ADDRESSED TO THE FIVE CENTRAL AMERICAN HEADS OF STATE

Panama, 7 September 1984

Sir,

On 9 June 1984 we had the pleasure of transmitting to you, on behalf of our respective Governments, the draft "Contadora Act on Peace and Co-operation in Central America". Today we respectfully submit a new version reflecting the observations and views which the five Central American Governments have put forward concerning the draft Act.

This latest version is the result of an intense process of consultations and a broad exchange of views with all the Central American Governments, which provided the Contadora Group with valuable ideas for revising and enhancing the Act and for facilitating a consensus that would be reflected in legal commitments undertaken by all the parties.

The purpose of this effort was to find viable formulas that would reconcile the various interests and to promote appropriate and firm political understandings that would guarantee regional security and respect for national sovereignty.

The revised version of the Contadora Act once again highlights the principal role of the Central American Governments in the peaceful settlement of the disputes and in overcoming regional problems.

The process of dialogue and negotiation that motivated the Contadora Group has enabled significant progress to be made in the search for peace and co-operation, progress which is reflected today in numerous points of agreement and in the creation of a coherent framework of understanding embodied in this revised version of the Contadora Act. The Central American Governments should now display the political will needed to give legal force to the commitments formulated during this process and should therefore adopt whatever realistic and equitable formulas for conciliation they deem appropriate.

The signing of the Contadora Act on Peace and Co-operation in Central America should provide the basis for security and coexistence governed by mutual respect which is essential for guaranteeing the political and economic stability so desired by the peoples of the area.

The progress made in the effort to prevent any aggravation of the conflicts in the region, the advance in the diplomatic negotiations, the strengthening of the political will to foster dialogue and understanding, and the broad international support for the Contadora process are all clear. However, it should not be forgotten that the arms build-up in the region is still continuing, as are the armed aggression, the border incidents, the destabilization operations and the foreign military presence.

In the light of the persistent threat to peace, we believe that the Governments of the region must expedite the process of assuming the legal commitments contained in the Contadora Act. Similarly, it is imperative for other governments with interests and links in the region to respect the right of self-determination of the Central American peoples and demonstrate unequivocal support for political negotiation in place of force, and for understanding and co-operation among all the governments of the region.

Negotiating implies yielding some ground in order to secure the ultimate objective which is considered essential. Only through honourable, just and serious agreements, based on conciliation and not imposed, will it be possible to achieve regional security, a prerequisite for peace and development in the Central American countries.

The Contadora Group today expresses its satisfaction at the progress in negotiations and at the development of an effective framework for a political and legal understanding. At the same time, it reaffirms its unswerving commitment to continue promoting dialogue, as well as diplomatic efforts to ensure that the principles of international law are fully applied and that the Central American peoples exercise their right of self-determination.

As you know, the United Nations and the Organization of American States have expressed their confidence in and support for the work of the Contadora Group. In various resolutions, they have stated that they wish to be kept informed of the progress of the negotiations which we have been promoting with a view to achieving peace and dialogue in Central America. We will therefore notify those international organizations in due course of the progress made in the important phase that has culminated in the submission of the revised version of the Act, which we are today transmitting to you.

We are confident that in the not too distant future, we the Ministers for Foreign Affairs of the Contadora Group and our colleagues in the Central American region, once the improvements considered relevant are made, will be able to sign the Contadora Act on Peace and Co-operation in Central America.

Accept, Sir, the assurances of our highest consideration.

(Signed) Augusto RAMIREZ OCAMPO,
Minister for Foreign Affairs of Colombia.

(Signed) Bernardo SEPULVEDA AMOR,
Minister for Foreign Affairs of Mexico.

(Signed) Oyden ORTEGA DURAN,
Minister for Foreign Affairs of Panama.

(Signed) Isidro MORALES PAUL,
Minister for Foreign Affairs of Venezuela.

Annex 15

Nicaraguan Acceptance of Contadora, 22 September 1984

[Spanish text not reproduced]

(Telex Message)

Managua, 21st Sept. 1984

President and Friend:

I am pleased to address myself to you in this occasion, in order to transmit the Nicaraguan response to the draft of the Revised Act elaborated by the Contadora Group and forwarded to us with note dated September 7th of this year from the Ministers of Foreign Affairs of Colombia, Mexico, Panama and Venezuela.

Nicaragua at present faces a serious increase in the threats and military aggression on the part of the Government of the United States of America, that in recent weeks has returned to its series of murders, the kidnapping of men, women and children, extensive damage to the economy, and the destruction of the scarce resources of this country.

At the same time, the threatening presence of North American naval vessels just a few miles from our coast-line, the direct participation of CIA mercenaries in attack on our territory and the incursions from neighbouring territories of more than six thousand Somocista counter-revolutionaries, makes up a scenario of aggression that our nation continues to repulse with all its energy and patriotism.

The will of Nicaragua to contribute to the limit of its possibilities to find peaceful solutions to the grave regional situation, as well as the recognition that the revised Act constitutes an important effort to reconcile differences and to equilibrate the requirements of all parties, has led us to consider the above-mentioned revised Act as a decisive instrument for the achievement of peace in the region.

For the reasons set out here, we bring to your attention the decision of the Government of Nicaragua to accept in its totality and immediately to sign, without modification, the revised Act of September 7th presented by the Contadora Group in pursuit of peace and the security of all the peoples of Central America.

Nicaragua is conscious of the need to achieve a peace agreement for the whole region, as soon as possible, in the form proposed by the Governments of the countries that make up the Contadora Group; we are also conscious that the agreement reached between the five Central American countries to guarantee peace and security in the region, will only be sufficient if it can count upon a normal and obligatory undertaking by the United States Government. Nicaragua considers it indispensable in order to achieve the noble objectives which constitute the meaning of Contadora, that the United States sign and ratify the additional protocol of the Act, and in consequence, bring to an immediate halt the aggression against Nicaragua. Taking into account the view of the Contadora Chancellors in their letter of September 7th to the Heads of State of Central America, that the revised Act "reflects the observations and commentaries that the five Central American Governments had formulated on the draft" and that "this latest version is the result of an intense process of consultation and an ample exchange of points of view with all the Central American Governments", as well as what is indicated later on in the sense that "to negotiate implies to give some concessions in order to achieve one maximum objective thought to be essential". Nicaragua considers that it is essential that amendments or modifications not to be introduced. If this were to occur, the result would only be endless discussions that would serve to interfere with the peace process that our peoples are right to demand so urgently.

President and friend, please receive the gratitude of the people of Nicaragua for your continuing efforts to support the achievement of peace in the region.

The people of Nicaragua, while endorsing the Revised Act of Contadora, continue to defend their right to self-determination, sovereignty and independence, with their lives still threatened by the aggressive policy of the North American Government.

So long as aggression does not cease, the Government of Nicaragua will continue to defend its inalienable right to adopt all measures necessary to guarantee our security and territorial integrity.

Fraternally,
Daniel ORTEGA SAAVEDRA.

Annex 16

A: "DOCUMENT DESCRIBES HOW US 'BLOCKED' A CONTADORA TREATY", *WASHINGTON POST*, 6 NOVEMBER 1984; B: "BACKGROUND PAPER FOR NSC MEETING ON CENTRAL AMERICA", 30 OCTOBER 1984

A

The Reagan administration believes it has "effectively blocked" what it views as an "unsatisfactory" regional peace settlement in Central America, according to a secret background paper prepared for a National Security Council meeting last Tuesday that the President attended.

The paper also outlines a wide-ranging plan to convince Americans and the rest of the world that Sunday's Nicaraguan elections were a "sham", promoting this view through US embassies, politicians, labor organizations, non-government experts, and public reports.

The briefing paper, marked "secret/sensitive", was obtained by *The Washington Post* from governmental sources. It provides a detailed look at the administration's approach to the Sandinista government just days before elections in Nicaragua and the United States.

It is not known whether all the items in the briefing paper were discussed. Secretary of State George P. Shultz and Assistant Secretary for Inter-American Affairs Langhorne A. Motley also attended what was described by officials yesterday as a "briefing".

The paper discussed the administration's approach to the draft version of the Contadora peace treaty that was completed Sept. 7. It was negotiated by the foreign ministers of Mexico, Panama, Colombia and Venezuela, who first met for the purpose in 1982 on the small Panamanian island of Contadora.

The treaty's principal thrust is to reduce foreign military influence, establish mechanisms for arms control, and prevent the Central American countries from making or sponsoring war on each other.

On Sept. 21, Nicaragua unexpectedly announced it would sign the 55-page draft treaty. The Reagan administration had not publicly criticized it up to that point.

Since the Sandinistas announced their willingness to sign it, three countries — Honduras, El Salvador and Costa Rica — reversed their previous position of support for the treaty and, along with the United States, sought extensive modifications in the draft to improve verification and execution mechanisms.

The paper declares:

> "We have effectively blocked Contadora Group efforts to impose a second draft of a revised Contadora Act. Following intensive US consultations with El Salvador, Honduras and Costa Rica, the Central American *sic* submitted a counterdraft to the Contadora states on Oct. 20, 1984 . . . that shifts concern within Contadora to a document broadly consistent with US interests."

The United States repeatedly has portrayed the decision by Central American countries not to approve the initial draft treaty as one made independently by those countries, despite consultations.

The briefing paper expresses concern that a fourth Central American country, Guatemala, has been reluctant to back its three neighbors in seeking changes in the treaty. "We will continue to exert strong pressure on Guatemala to support the basic Core Four position", the paper says. The "uncertain support" of Guatemala is "a continuing problem", it adds. The term "Core Four" refers to Guatemala, Honduras, El Salvador and Costa Rica.

Mexico has been the most insistent promoter of signing the Sept. 7 version of the Contadora treaty. The briefing paper notes that Guatemala, because of its problems with guerrilla insurgency along the Mexican border, is seeking closer ties to Mexico, providing a "strong incentive" for Guatemala to lean toward the Mexican view.

But the paper concludes in a summary:

> "We have trumped the latest Nicaraguan/Mexican efforts to rush signature of an unsatisfactory Contadora agreement, and the initiative is now with the Core Four, although the situation remains fluid and requires careful management."

The paper notes that the administration recently has had "mixed" success in dealing with Nicaragua. "Congressional failure to fund the armed opposition is a serious loss, but our handling of the Nicaraguan election issue and Sandinista mistakes have shifted opinion against the sham elections", it says.

This was the administration line before and after the election. But the paper outlines ways in which this view should be promoted throughout the world.

It calls for encouraging "sympathetic American intellectuals and academics", "US labor" and "selected US political figures" to lobby their counterparts in Europe and Latin America, seeking critical statements about the election.

Another proposal was for the United States to use "selected embassies" in Europe and the Western Hemisphere to promote administration views.

"Embassy Bonn will approach West German ex-chancellor Willy Brandt to determine if he plans to make any public statement" on the election following the withdrawal of a key opposition party.

That withdrawal "has now left the Sandinistas holding a near worthless hand", the paper says.

The document also takes note of US-Nicaraguan bilateral talks hosted by Mexico. At the 6th round, held in September, the US aide "tabled" a comprehensive statement by Nicaragua, the background paper says, adding that the Sandinistas have adopted the Sept. 7 version of the Contadora treaty as their negotiation position vis-à-vis the United States as well.

B

The situation in Central America, particularly in El Salvador and in the regional peace talks, is moving in a direction favorable to US interest, though difficult problems remain. In Nicaragua, the picture is mixed. Congressional failure to fund the armed opposition is a serious loss, but our handling of the Nicaragua election issue and Sandinista mistakes have shifted opinion against the sham elections. We have trumped the latest Nicaraguan/Mexican efforts to rush signature of an unsatisfactory Contadora agreement and the initiative is now with the Core Four, although the situation remains fluid and requires careful management.

This paper provides a summary assessment of issues raised in the NSC memorandum of October 24, 1985.

Central American Negotiations

(1) *US-Nicaragua bilateral talks.* Ambassador Shlaudeman has held six meetings with Vice-Foreign Minister Tinoco. The seventh round is set for October 29-30. We tabled a comprehensive statement at the most recent meeting on September 25. Nicaragua's adoption of the September 7 Acta as its negotiating position at Manzanillo has virtually eliminated earlier Honduran concern that the Manzanillo talks might "undercut Contadora". To the contrary, it has led them to see that our bilateral talks strengthen the Core Four position within Contadora. Pursuant to Presidential decision a key US objective remains to help obtain a Contadora treaty which simultaneously implements the Contadora 21 Objectives and provides for effective verification. Reports and key documents on these talks since the NSPG meeting of June 25, 1984, include:

— Memorandum for Mr. McFarlane from Mr. Hill, September 28, 1984.
— Calendar of Reciprocal Steps, September 6, 1984.
— Memorandum for Mr. Hill from Mr. Kimmitt, August 31, 1984.
— Memorandum to the President from Acting Secretary Dam, August 21, 1984.
— Memorandum from Ambassador Shlaudeman to the Secretary, August 2, 1984.
— Memorandum from the President, July 28, 1984.
— Memorandum from the Secretary to the President, June 26, 1984.

(2) *Core Four position on the draft Contadora Treaty.* We have effectively blocked Contadora Group efforts to impose the second draft of a Revised Contadora Act. Following intensive US consultations with El Salvador, Honduras and Costa Rica, the Central American submitted a counterdraft *(sic)* to the Contadora States on October 20, 1984. It reflects many of our concerns and shifts the focus within Contadora to a document broadly consistent with US interests. A copy of the new draft is being sent to each NSC agency, with English translation expected by the October 30 meeting. We will continue to seek Core Four support for these concerns expressed by us but not "incorporated" in the revised Core Four drafts. A survey of proposed Core Four changes is contained in Tegucigalpa 13080 and San José 8392.

The Four Contadora Group Vice-Ministers will meet in Panama October 31-November 1 for technical review of the Core Four drafts and revision of their own. Contadora Group Foreign Ministers would then meet November 9-10 to review recommendations of the Vice-Ministers and all nine Foreign Ministers would meet in Brasilia at the time of the OAS General Assembly November 17. Contadora spokesmen have become notably subdued recently on prospects for an early signing. While some now concede that agreement may not be reached for some months, others remain concerned that early signature is desirable. Secretary Shultz will discuss next steps in this process at the NSC meeting.

(3) *Proposed US efforts to obtain Guatemalan Co-operation in Contadora Process.* The uncertain support of Guatemala for the Core Four is a continuing

problem. Guatemala's chief security concern is its guerrilla insurgency and the sanctuary that it has, until recently, enjoyed in Mexico. Mexico's removal of the border refugee camps and the need for future co-operation provide a strong incentive pulling Guatemala toward Mexico in Contadora. We have undertaken intensive efforts with Foreign Minister Andrade and Guatemalan Chief of State Mejia on this issue. Illustrative of these efforts were the Secretary's October 10 meeting in Panama with General Mejia (Secto 12025), the Secretary's meeting with Andrade and other Core Four foreign ministers in New York on October 5 (State 298926) and President Duarte's efforts with General Mejia (San Salvador 11393 and Guatemala 10043). Serious personality problems between Honduran Foreign Minister Paz Barnica and Andrade continue to hamper efforts to keep the Core Four together. We will continue to exert strong pressure on Guatemala to support the basic Core Four position.

(4) *Mexican and Nicaraguan activity at the UN, OAS* et al. Mexican and Nicaraguan representatives have been highly active but so far unsuccessful in efforts to obtain international endorsement for the September 7 Contadora draft. The Secretary was direct in expressing our displeasure at Mexican conduct at the UNGA (State 302056). Reports and actions relating to recent Nicaraguan Mexican activity at the United Nations are contained in USUN 2845, 2763, 2884, and State 315605, 315894, 317226 and 317809. A summary report of the EC-Contadora Foreign Ministers conference is contained in San José 7644.

(5) *US efforts to help the Core Four.* Covered under item (2) above. The following cables describe several aspects of recent US efforts to help the Core Four countries secure acceptance of an acceptable draft: San Salvador 12140, Tegucigalpa 12799 and San José 6244.

(6) *Any plans for US signature of documents.* This requirement is unclear but presumably refers to the unauthorized backgrounding in Washington during the Secretary's last trip to the region that an agreement would be signed with Nicaragua in Mexico. That backgrounding was erroneous and unhelpful to US interest. The Administration is on record in opposition to signing a Protocol, both in principal *(sic)* and specifically in the case of Contadora. We have attempted to prevent adoption of a Protocol that would be open to Cuban, Soviet, or other unwelcomed signatories. However, this continues to be an important concern.

(7) *US expectations of future events and strategy to obtain an acceptable treaty.* Secretary Shultz will address this question in his presentation in the NSC meeting.

Public Diplomacy about the November 4, 1984, Election in Nicaragua

We have succeeded in returning the public and private diplomatic focus back in the Nicaraguan elections as the key stumbling block to prospects for national reconciliation and peace in the region. The breakdown of the Cruz negotiations in Rio, corroboration by SI members that Arce backed away from the SLN position once it became apparent that Cruz was prepared to seek approval of the Arce proposal have all contributed to this turn of events, as has Duarte's La Palma initiative. The PLI withdrawal from the elections has now left the Sandinistas holding a near worthless hand. An election held on November 4 will not give them the legitimacy they covet, although it will further consolidate Sandinista control over Nicaragua. Efforts continue to press the Sandinistas to postpone the elections and agree to Coordinadora demands.

Our public diplomacy strategy, approved by the NSC, is contained in Mr. Kimmitt's Memorandum to Mr. Hill, dated October 24, 1984. A follow-up memorandum on the Nicaragua elections is attached.

Attachment. As stated.

Public Diplomacy on Nicaragua Elections

A. Plans to provide the facts to the US public

S/LDP has prepared a report, "Resource Book: The Sandinista Election in Nicaragua", which documents the undemocratic nature of the election. Advance copies are already being distributed to selected journalists, and on October 29 it will be released formally. Copies will be transmitted to selected members of Congress who are likely to comment on the Nicaraguan elections (Senate Foreign Relations Committee, House Foreign Affairs Committee, etc.) and sent to our general mailing list of government officials and influential opinion leaders around the country.

S/LDP is preparing a compilation of statements on the elections by Sandinistas themselves, key political and church leaders in Nicaragua and notable foreign leaders. This paper, translations of Bayardo Arce's speech to the Nicaraguan Socialist Party, and the FSLN's propaganda plan for the elections will be distributed to selected members of Congress, journalists and opinion makers.

ARA is preparing a report comparing the Nicaraguan elections with those in El Salvador for release to the press and selected members of Congress.

Administration officials will give background briefings and interviews to selected members of the press and seek opportunities to appear on the media to discuss the elections.

S/LDP is preparing a Public Diplomacy guidance on the elections for use throughout the government.

We shall encourage non USG experts to make public statements, prepare articles, and appear on the media programs, especially immediately prior to and following the November 4 elections, e.g., the morning TV shows on November 5.

Following the elections, S/LDP will prepare a follow-up report on the elections analysing how the process unfolded the meaning of the results, and the prospects for pluralism in Nicaragua's future.

B. Plans to provide the facts to the international community

In selected OECD and ARA posts we will approach significant and knowledgeable national leaders, in and out of government, to encourage public statements condemning the Nicaraguan elections as they are now set up. Useful statements could come from government officials, political party leaders including international parties, such as (SI EDU), intellectuals, church and labor leaders.

We will encourage selected US political figures to contact their counterparts in Europe and Latin America asking that they (the counterparts) make public statements criticizing Nicaraguan elections.

US labor will contact counterpart organizations in Europe and Latin America seeking statements criticizing elections in Nicaragua as now set up.

We will encourage sympathetic American intellectuals and academics to contact their counterparts in Europe and Latin America to examine the validity of the elections in Nicaragua, or to get their counterparts to let Nicaraguan leadership know (preferably through public statements or letters) that they are skeptical of the elections as now set up, that they have serious doubts about the elections now that the Contadora and PLI have withdrawn, and that they will be watching the elections closely both before and after November 4.

We will follow up with the Vatican recent statement condemning persecution of the Church in Nicaragua.

Selected embassies in OECD and ARA countries will be asked to approach key contacts to review our views on the elections in Nicaragua. Media contacts should be encouraged to write editorials questioning the validity of the elections.

Embassy Bonn will approach Willy Brandt to determine if he plans to make any public statements on the Nicaraguan elections now that the PLI has withdrawn from the campaign.

USIA will send a fact sheet on Nicaraguan elections via Wireless File to Europe and Latin America.

VOA and Wireless File commentary will be sent using statements questioning the validity of the Nicaraguan elections made by European and Latin American Leaders.

VOA and Wireless File commentary will carry S/LDP prepared backgrounder on Sandinista elections.

Wireless File will distribute Comandante Bayardo Arce's speech to the policy committee of the Partido Socialista de Nicaragua and other relevant material prepared by S/LDP.

Annex 17

LETTER FROM FOREIGN MINISTERS OF CONTADORA COUNTRIES TO FOREIGN MINISTERS OF CENTRAL AMERICAN COUNTRIES, 6 JUNE 1986

[Spanish text not reproduced]

Managua, 6th June 1986.

His Excellency Dr. Miguel d'Escoto Brockmann,
Minister of Foreign Affairs of Nicaragua.

We, the Ministers of Foreign Affairs of Colombia, Mexico, Panama and Venezuela met on the 6th of June 1986, a date jointly agreed in order to officially conclude the negotiations on the Act of Contadora for Peace and Co-operation in Central America, and to proceed towards its ratification. We shared our conclusions with the Ministers of Foreign Affairs of Argentina, Brazil, Peru and Uruguay. Jointly, we examined the situation in Central America and analysed the perspectives of diplomatic negotiation in the Region.

We observe, that besides some positive attitudes, there still prevail in Central America situations of deterioration of conflict. Regional and national security interests oblige us not to desist from our objective of Peace. This situation implies the responsibility to continue to give our attention to the solution of the regional crisis, conscious as we are of its importance and the values that are compromised for all our continent.

We began our reflection by analysing the Declaration of Esquipulas, which contains the conclusions of a meeting which is now considered to be historic, if only because of the fact of having brought together the five heads of State of Central America. The Esquipulas declaration affirms that the Contadora process constitutes "the best vehicle available to Central America to date, in order to achieve peace and democracy and reduce political tensions". In another of its sections, the Declaration expresses the will of "the Governments of Central America to sign the Act of Contadora for Peace and Co-operation in Central America, with the intent of fully complying with all the commitments and procedures contained therein".

We analysed, also, the advances and conclusions made in the latest meeting held between the plenipotentiaries of the Central American nations and the Vice-Ministers of the Contadora Group. At that time, we indicated that it was essential to reach a definitive understanding on the only matters still pending agreement in the Contadora Act: that is, the limitation of the arms race, and the suspension and regulation of international military manœuvres. We proved that this objective could not be wholly achieved.

The meetings of Plenipotentiaries have permitted the statement in depth and in all their magnitude of the premises and fundamentals from which the five countries work. In this way, we have arrived at the conclusion that on these bases it is possible to arrive at a conciliation of interests, bringing together the points of coincidence contained in the different proposals.

We noted with interest that the Plenipotentiaries of the Central American countries, after recognizing the impossibility of signing the Contadora Act on the agreed date, communicated to their respective governments their intention to continue our negotiating process and that the Group of Contadora should continue fulfilling its task of active mediation in search of feasible and balanced agreements for all parties directly or indirectly involved.

We, the Ministers of Foreign Affairs of the Contadora Group, taking into consideration these precedents, have come to the following conclusions, secure in the belief that they will be shared by the Governments of Central America, in the first place, in response to the positions formulated in the Esquipulas Declaration, we state once again the determination of the Governments of the Contadora nations to go on offering our participation in this diplomatic negotiating process which represents the hopes of articulating an eminently Latin American political action. We consider that it is necessary, at the same time, to clearly define the prerequisites of this negotiation and the framework within which it should be conducted in order to attain the high aims which we have indicated. Therefore, the countries of the Contadora Group and those of the Support Group, have considered it opportune to issue a declaration in which we allude to these questions, as well as to the obstacles to, and perspective of the peace process as a whole.

Today we formally deliver that which, in the opinion of the Contadora Group, constitutes the final draft of the Act of Contadora for Peace and Co-operation in Central America. The text incorporates the essential political commitments related to the substantive aspects. Once this question is resolved, we propose to proceed immediately to another phase of the negotiations, referring to matters of an operational character and which will refer mainly to the establishment of the Verification and Control Commission.

With the outline established above, we have drafted a balanced and fair text, from the point of view of all parties. As far as the topic of the control and reduction of the arms race is concerned, in our opinion there is validity in some of the criteria put forward by the Plenipotentiaries. In the first place, it is necessary to formulate as soon as possible an inventory of the actually existing armaments in the countries of the region and suitable for reduction or elimination. To this list it is necessary to apply a factorization table based on equivalent values of technological capacity and destructive power.

In relation to international military manœuvres, the recent proposals conform the validity of our previous positions. We propose to maintain a general criterion of balance and reciprocity on other equally important topics in the area of regional security.

Other questions considered, such as pending matters for agreement, are of a different nature. It will be possible to take them up systematically to the extent that the commitments related to the substantial parts of the Act have been defined and accepted. For example, before agreeing upon the system of verification and control, it is necessary to define what is to be verified and controlled. The proposed Statute, although it may need completion and refinement, logically belongs to the area of regulations. In its later revision and negotiation, the Statute should be considered as part of the Act; and in no case can it be placed in opposition to the central themes of the relevant chapter, which has already been agreed upon. It is necessary to define as well the norms contained in the final dispositions and in the corresponding protocol.

In parallel or joint actions, we propose to start the necessary consultations for the interaction of the mechanisms for implementation and evaluation which the Act foresees, as well as resolve the questions related to the financing of, and headquarters of, the corresponding organization.

Among the matters tabled, there exists one which merits special consideration: the moment of entry into operation of the commitments in the Act. Throughout the negotiating process, we have tried out the most varied formulae in order to achieve an acceptable solution, based upon international law, experience and practice. It has not yet been possible to find a satisfactory formula. One possibility is that the entry into operation of the agreements and commitments of the Act should occur when the five Central American Governments have ratified it, on the basis of the procedures established in their respective internal legislation. The Central American Governments have offered to ask the legislative powers of their countries not to frustrate the efforts to achieve peace and co-operation in the Central American Isthmus that we have supported and maintained together in the last three and a half years.

The definition of this topic in terms already mentioned, inevitably obliges us to re-examine other aspects of the Act itself. On previous formulae and in order to secure the required simultaneity of the agreements, part of the preparation for its execution was to take place between the moment of its signing and that of ratification of the corresponding legal instrument. In the present circumstances, it is necessary for all these preparations to evolve in a different framework, through specific agreement of the executive powers of the Central American countries. We are in no doubt that this agreement will become reality, thus reflecting a political will expressed in so many occasions.

On this assumption, an attempt will be made to create the mechanisms of verification in the matter of security and control, that can begin to function provisionally. If these mechanisms cannot be integrated in the short run, the Central American Governments and those of the Contadora Group could take in hand this provisional procedure and carry out the tasks required by such preparations.

In this case, a distinction becomes necessary. A considerable part of the agreements registered in the section on security in the Act, such as the prohibition of support to irregular forces and to acts of subversion, terrorism, or sabotage, are principles of international law which only need to be underlined or ratified. They have validity and actuality independently of what the Act itself determines. These international obligations no country can elude and their enforcement can not be subject to particular circumstances. Additionally, their explicit observation would create a climate of confidence indispensable to reverse the present warlike tendencies and contribute to the pacification of the region.

In the negotiating framework we propose, actions related to the preparation for the rapid execution of the agreements on the matter of security, would take place after signing the Act. As far as the question of armament and a halt to the arms race is concerned, for example, the duration and terms of control and reduction will be established, according to the criteria presented in the substantive area of the Act. As an obligatory point of reference, the registration of arms inventories and arms personnel would be compulsory. The same would apply to the obligations defined in terms of stages and timetables in the section on security, that would have to be determined, at the same stage, with similar procedures to those indicated above.

The formulae and the scheme that we propose gather the proposals of the different Central American Governments in an effort to synthesize and compatibalize them. Although they can not reflect integrally all the points of view of any particular country, they do correspond to the essentials of the basic concerns contained in each proposal.

We have no doubt that we can count upon the favourable answer of the

Central American Governments. In that way, our diplomatic effort will be supported by solid bases and not only its continuity will be guaranteed, but also the required depth that it requires. Above all, we will give a demonstration of the capacity for political harmony, efficacy, unity and cohesion that, as genuine Latin Americans, we are obliged to produce in face of the difficulties and changes of our times.

We maintain the conviction with which we worked indefatigably during three years and a half in favour of a statute for peace in Central America, which today we deliver to the five Governments in the region. We trust that you, as prime trustees for Peace and Co-operation in the region, will take the decisions required to enforce the Act of Contadora.

We take this opportunity to reiterate to you, our assurance of our consideration and friendship.

Dr. Augusto RAMIREZ OCAMPO,
Minister of Foreign Affairs
of Colombia.

Lic. Bernardo SEPULVEDA AMOR,
Minister of Foreign Affairs
of Mexico.

Dr. Jorge ABADIS ARIAS,
Minister of Foreign Affairs
of Panama.

Dr. Simon ALBERTO CONSALVI,
Minister of Foreign Affairs
of Venezuela.

Annex 18

NICARAGUAN RESPONSE TO CONTADORA, 17 JUNE 1986

[Spanish text not reproduced]

Ministry of Foreign Affairs,
Managua, Nicaragua.

Managua, June 17th 1986.

Dear Minister,

I have the pleasure to address myself to Your Excellency, with reference to the draft of the Contadora Act for Peace and Co-operation in Central America, submitted to the Chancellors of Central America on the 7th of June during the latest ministerial meeting, together with the Message of Panama and the Explanatory Note on the draft of the Act. These three important documents represent the position of both the Contadora Group and Support Group on the negotiating process in Central America.

Under the present circumstances, we believe it fitting to remember that the Group of Contadora submitted to the Central American countries on the 7th of September 1984, a revised version of the Act, asserting then that it was "the result of an intense process of consultations and after an ample exchange of points of view with all the Central American Governments".

In a diplomatic note dated September 21st 1984, the Government of Nicaragua informed the Contadora countries of its decision "to accept in its totality and immediately sign, without any kind of modification, the Revised Act of the 7th of September".

After this acceptance by Nicaragua was made public, the North American Government embarked in a strenuous campaign designed to impede the signing of this regional agreement, thus achieving what they themselves called "The Effective Blockade" of the draft proposed by the Contadora Act. The National Security Council document of October 30th 1984, defines this strategy of the North American Government to boycott Contadora.

As a consequence of the rejection and North American pressures, although the Contadora Group had already officially concluded the negotiations of the Act, it was decided to re-open this negotiating process which now culminates in its new draft of the Act, submitted on June 7th 1986.

The Contadora Group in its note of June 6th, points out that as to the present situation, "there prevail in Central America, together with some positive signs, situations that imply a considerable deterioration of the conflict". The North American Government, far from collaborating in the creation of conditions that favour peace efforts, has intensified its military manœuvres in Honduras, along the border with Nicaragua, and continues to increase its bellicose policies and interventions against our country. This is demonstrated by continual US threats of invasion and its decision to increase military and economic aid to the mercenary forces at its service, openly contravening international law as indicated by the May 10th 1984 decision of the International Court of Justice, and attempting to jeopardize the United States Congress itself with these actions in violation of US law.

All this demonstrates the unvarying conduct of the United States Government in continuing with its terrorist policy and the sabotage of the negotiating efforts pursued by Contadora.

Likewise, the USA continues to use the territory of neighbouring countries as a sanctuary and base of aggression against Nicaragua, without indicating by any actions or signs that this might cease. On the contrary, some Central American Governments try to justify their tolerance of and support for this kind of practice.

It is for that reason that Nicaragua shares these objectives with the Chancellors of Argentina, Brazil, Colombia, Mexico, Panama, Peru, Uruguay and Venezuela in the Message of Panama, that

> "it would be illusory to believe that the compiling alone of the draft of a treaty will solve the crisis. It would also be necessary to advance towards the creation of the right conditions for the signing of the Peace Treaty itself."

Based on what has been said previously, after a thorough analysis of the last draft of the Act, of the Message of Panama and of the Explanatory Note (all essential documents for the correct interpretation of the negotiating process and that of its future stages) the Government of Nicaragua announces the following:

First: That Nicaragua has always been ready to sign the Peace Act within the spirit of the Caraballeda Message, and considers that the 7th of June 1986 Act, presented formally to the Central American countries by the Contadora Group, constitutes the only instrument "capable of producing a quick and efficient conclusion of the negotiating process", in order to achieve peace for Central America.

Second: Considering the Explanatory Note from the Contadora Group dated June the 6th where it is proposed that "it is necessary to compile as quickly as possible an inventory of all existing weapons in the countries of the region susceptible to reduction or elimination" and in agreement with the list of military matters that Nicaragua considers subject to reduction, limitation, regulation and elimination within the framework of the negotiations, the Government of Nicaragua is prepared to deliver to Contadora an inventory of the following military matters:

1. All types of military aeroplanes.
2. All types of military helicopters.
3. Military aerodromes.
4. Battle tanks.
5. Heavy mortars of more than 120 mm.
6. Self-propelled anti-aircraft cannon.
7. Multiple rocket launchers.
8. Artillery of more than 160 mm.
9. Self-propelled artillery.
10. Surface to surface rocket launchers on naval vessels.
11. All military vessels.
12. International military manœuvres.
13. Foreign military bases.
14. Foreign military advisors.

Third: In line with the Explanatory Note of Contadora, the Government of Nicaragua is elaborating a Factorization Table of the above list of military matters.

Fourth: In conformity with the Message of Panama, the Government of Nicaragua appeals to the countries of the Contadora Group to take the necessary steps to "establish appropriate conditions for the signing of the Peace Act", for which it is urgent to promote dialogue between the United States and Nicaraguan Governments, support the creation of Mixed Commissions for the solution of frontier problems, favour dialogue and to agree upon pacts of non-aggression between the Central American Governments.

Fifth: We also comply with the Message of Panama, in that to go forward in the Process of Contadora as a final Peace objective, it is imperative to accept three kinds of obligations:

(a) To prevent the use of the national territory for aggression against another country by military or logistic support to irregular forces or subversive groups.
(b) No country must form membership of any military or political alliance that directly or indirectly threatens the peace and the security of the region by plunging it into the East-West conflict.
(c) That no super power militarily or logistically support the irregular forces or subversive groups that act or could act in the countries of the region, or that uses or threatens to use force as a means to overthrow a government in the area.

In this way Nicaragua is taking fresh steps in favour of the peace and stability in the Central American region.

Finally, Minister, I convey to you the sincere gratitude of the people and Government of Nicaragua for those efforts of the Contadora and Support Groups towards peace and security in our long-suffering Central American region, ratifying once more, our total backing to the Latin Americanist action of the Contadora and Support Groups.

We are convinced that the unity of the Latin American peoples can tame those regressive forces that try to deny our sacred right to self-determination and independence, and that counting upon the political will of other Central American countries and that of the Government of the United States, it will be possible to successfully conclude the negotiating process of Contadora.

I convey to you, Minister, this testimony of my highest consideration and personal regard.

(Signed) Miguel d'ESCOTO BROCKMANN,
Minister of Foreign Affairs.

The Right Honorable Enrique Iglesias,
Minister of Foreign Affairs of the Republic of Uruguay.

Annex 19

RESPONSE OF HONDURAS TO CONTADORA, 13 JUNE 1986[1]

[Spanish text not reproduced]

(Translation)

NOTE FROM THE PERMANENT REPRESENTATIVE AMBASSADOR OF HONDURAS ANNEXING THE PRESS COMMUNIQUE RELEASED BY HIS GOVERNMENT ON JUNE 13, 1986, IN RELATION TO THE JOINT MEETING OF MINISTERS OF FOREIGN AFFAIRS IN PANAMA

June 16, 1986.

Mr. President:

I have the honor to address Your Excellency in order to inform you and, through your offices, the States Members of the Permanent Council, of the Press Communiqué No. 038-86 of June 13, 1986, released by the Government of Honduras in relation to the Joint Meeting of Ministers of Foreign Affairs held in Panama City on June 6 last.

I avail myself of this opportunity in order to reiterate to Your Excellency the assurances of my highest consideration.

(Signed) Hernán ANTONIO BERMUDEZ,
Ambassador, Permanent Representative.

His Excellency Mr. Fernando Andrade Diaz-Duran,
President of the Permanent Council,
Organization of American States,
Washington, D.C.

PRESS COMMUNIQUE NO. 038-86

The Secretariat of Foreign Relations, after analysing the documents that were given to the Government of Honduras by the Contadora Group, in the Joint Meeting of Ministers of Foreign Affairs, held in Panama City on June 6 last, makes the following announcement for the national opinion:

1. The last project for an instrument ("acta") proposed by Contadora does not constitute, in the opinion of the Government of Honduras, a document that establishes reasonable and sufficient obligations for guaranteeing its security.

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[1] See **II**, Correspondence, Nos. 44, 51, 71, 73 and 74.

2. The Contadora Group stated in that meeting that the project in reference exhausted its mediation efforts with relation to the substantive elements of the "acta", but that notwithstanding they were available for collaborating in the negotiation of the operative and practical elements of the "acta".

3. The Government of Honduras reiterates its willingness to continue exploring new formulas that effectively guarantee the legitimate interests of all the States and to contribute in any other efforts, destined to achieving the internal pacification and national reconciliation of certain States, the maintenance of peace and the consolidation of democracy in Central America.

Tegucigalpa, D.C., June 13, 1986.

Information and Press Office,
Secretariat of Foreign Relations.

Annex 20

LETTER OF HONDURAN FOREIGN MINISTER CONTRERAS

[Spanish text not reproduced]

MINISTRY OF FOREIGN AFFAIRS
OF THE REPUBLIC OF HONDURAS

Ref. No. 249/86-DSM

Tegucigalpa, D.C.,
21 June 1986.

Dear Ministers and Friends,

I have the honour to acknowledge receipt of your kind letter dated June the 6th, in which you informed me that on that date the Chancellors of Colombia, Mexico, Panama and Venezuela had met in Panama City in order to conclude the negotiations of the Contadora Act for Peace and Co-operation in Central America; and that they shared their conclusions with the Chancellors of Argentina, Brazil, Peru and Uruguay.

On the occasion of the joint meeting of the Chancellors of Contadora, of the support Group and of Central America, held in Panama on June the 6th 1986, the Contadora Group formally handed over to the Central American Chancellors what on its own judgment, should constitute the last draft of the Act of Contadora for Peace and Co-operation for Central America.

As announced on that solemn session, I am pleased today to be able to offer you the answer of the Government of Honduras, based on the calm and fraternal study of the documents given to me, that is to say, the speech of the Chancellor of Panama, the letter from the Contadora Chancellors to the Central American Chancellors, draft of the Act of Contadora and the Message of Panama.

I reiterate to all and each of you, the respect of the Government of Honduras, for the enormous collective effort you have demonstrated, distinguished by the noblest of political wills, investment of human and material resources, in that fraternal eagerness to achieve through political negotiation, a legal outline capable of guaranteeing a sustained democratic peace inside the Central American States and between the States of the region.

Despite the persistent effort to achieve the desired objectives, I fulfil my duty to inform you, as did the Honduran Chancellery in its Statement of 13th of this month, that, "The last draft of the Act proposed by Contadora, does not constitute, in the opinion of the Government of Honduras, a document that establishes reasonable and sufficient obligations to guarantee its security."

In fact, on the subject of disarmament, that is, to the limitation, reduction and the control of arms and military personnel, the Contadora proposal defers to a later stage to the coming into force of the Act, the negotiation of the limits and agendas of arms reduction and military personnel. The position of Honduras to this fundamental aspect of the Act, is that the obligations relative to it, must be enacted with precision and clarity in the text itself of the Act.

The system proposed by Contadora requests a negotiation on disarmament at a later stage, that implies uncertain results and that would bring about the abolition of other commitments on the matter of security, jeopardizing in time, the principles of reciprocity and simultaneity that have prevailed during the negotiation. On the other hand, to accept a hazardous and uncertain situation on the matter of disarmament, would be the same as to recognize and ratify a situation that in fact already exists: the military supremacy of one of the Central American States over the others.

I also would like to state, that the Contadora Project does not reflect adequately the criteria accepted by four Central American Governments in relation to the use of the "Basic Table of Factors, in order to establish the Maximum Levels of Military Development" and, on the contrary, attempts to apply subjective criteria of difficult multilateral evaluations that would make impossible an agreement on limitation, reduction and control of armament and military personnel.

I would also like to point out that in Chapter III a new section 23 tries to reintroduce points which were already discarded in negotiation with plenipotentiaries, because they affected constitutional arrangements in four countries.

On the matter of military manœuvres, I observe an unacceptable return to that version of Contadora of November 1985, that implied erroneously into a supposed equivalence between military manœuvres, armaments and military development.

As I already stated orally at our joint meeting in Panama, the Government of Honduras notes what the Contadora Group has expressed in the sense that the last draft of the Act exhausts its action of intercession on the substantive aspects of the Act but, that the Group would remain ready to collaborate in the negotiation of its operative and practical aspects. In the same way, we note the fraternal intention that the negotiation of all practical a[illegible]operative aspects of the Acta be concluded before the signing of such an instrument. However, as it is rightly pointed out by the honorable Ministers in their notice of 6th of June last, it would only be possible to systematically approach these matters in so far as the agreement dealing with the substantive aspects of the Act, would have been clearly established and accepted.

Despite the above-mentioned difficulties, I could not finish without making clear, once more, the deep acknowledgment of the Government of Honduras for the enormous and persevering efforts achieved by the Contadora Group to attain a long lasting Peace in Central America. I can certify to the exhausting working days you kept over a period of more than three years, proving at all times, such a physical strength and such a conciliatory intellectual will, worthy of the noble cause that brought them into existence. If Contadora has not obtained the total success we wish, it has been due to causes not attributed to the Group. History will record these efforts as the most beautiful proof of American solidarity, more than an intangible ideal, it is a real fact, that exists and brightens the future of our continent.

With the confidence that Honduras will continue to participate in a constructive way in all that would tend to encourage Peace in the region, I beg you to accept the repeated testimony of my highest regard and personal respect.

(Signed) Carlos LOPEZ CONTRERAS,
Secretary for Foreign Affairs.

The Right Honorable Dr. Augusto Ramirez Ocampo,
Minister of Foreign Affairs of Colombia.

The Right Honorable Lic. Bernardo Sepúlveda Amor,
Minister of Foreign Affairs of Mexico.

The Right Honorable Dr. Jorge Abadia Arias,
Minister of Foreign Affairs of Panama.

The Right Honorable Dr. Simon Alberto Consalvi,
Minister of Foreign Affairs of Venezuela.

Annex 21

"FLIGHT CREW LOG TRIP AND EXPENSE RECORD", OBTAINED BY GOVERNMENT OF NICARAGUA FROM C-123 PLANE THAT WAS SHOT DOWN OVER NICARAGUA ON 5 OCTOBER 1986 AND WHOSE CREW INCLUDED EUGENE HASENFUS

[Not reproduced]

Annex 22

NOTE FROM THE GOVERNMENT OF NICARAGUA TO THE ORGANIZATION OF AMERICAN STATES CONCERNING HONDURAS'S "NEW DECLARATION" OF 26 MAY 1986

[Spanish text not reproduced]

(Translation)

May 18, 1987.

Excellency:

I have the honor to address Your Excellency on the occasion of communicating the letter dated May 15, 1987, which the Minister of the Exterior of the Republic of Nicaragua is sending in relation to your communication of June 30, 1986, enclosing letter DSM-206/86 of May 26, 1986, of the Ministry of Foreign Relations of the Republic of Honduras.

Please accept, Excellency, the assurances of my highest consideration.

(Signed) Carlos TUNNERMAN B.,
Ambassador.

His Excellency Mr. Joao Clemente Baena Soares,
Secretary General,
Organization of American States,
Washington, D.C.

Managua, May 15, 1987.

Mr. Secretary General:

I have the honor to address Your Excellency with reference to your letter of June 30, 1986, in which you communicate document DSM-206/86 of May 26, 1986, of the Ministry of Foreign Relations of Honduras, informing of the "modifications introduced to the acceptance of the Jurisdiction of the International Court of Justice, since the contents of said declaration of modification are equally applicable to article XXXI of the American Treaty on Pacific Settlement".

With relation to this matter, I inform the Secretary General of the following:

1. Honduras ratified the American Treaty on Pacific Settlement on February 7, 1950, that is to say, thirty-seven years ago without making any reservations,

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See **II**, Correspondence, Nos. 44, 51, 71, 73 and 74.

2. In accordance with the Law of Treaties, States may only make reservations at the moment of subscription, ratification or adherence to an international instrument.

3. Article XXXI of the Pact of Bogotá establishes a fundamental conventional obligation by which all the States party to the American Treaty of Pacific Settlement recognize, in relation to the other States party, and for the duration of the treaty, as compulsory, *ipso facto* and without any conditions, the jurisdiction of the International Court of Justice.

4. The attempt by Honduras of introducing a reservation to an article of the Pact of Bogotá, that is, to the Pact of Bogotá, is inadmissible and ineffective.

5. Consequently, Nicaragua considers inadmissible the modification presented by Honduras, which does not have any legal validity and constitutes a grave violation of the American Treaty on Pacific Settlement.

At the same time as requesting that Your Excellency make known the position of Nicaragua to the other States members of the Organization of American States, I take this opportunity in reiterating the assurances of my highest consideration.

(*Signed*) Miguel d'ESCOTO BROCKMANN,
Minister of the Exterior.

His Excellency Mr. João Baena Soares,
Secretary General,
Organization of American States.

Annex 23

OPINION OF THE INTER-AMERICAN JURIDICAL COMMITTEE ON THE AMERICAN TREATY ON PACIFIC SETTLEMENT (PACT OF BOGOTA). ORGANIZATION OF AMERICAN STATES DOC. OEA/SER.G. CP/DOC. 1603/85. 3 SEPTEMBER 1985

September 3, 1985.

Excellency:

I have the honor to convey to Your Excellency the opinion of the Inter-American Juridical Committee on the American Treaty on Pacific Settlement (Pact of Bogota) as well as the Report of the Rapporteur for this topic and the papers some of the members of the Committee prepared to explain their votes on this topic.

That opinion was transmitted to me with a note from the Chairman of the Committee, dated August 29, 1985. Therein he requests that the document be transmitted to the Permanent Council so that it may consider it via its Committee on Juridical and Political Affairs, at the meetings that that Committee will hold on Thursday, August 5, and Friday, August 6, with the Chairman of the Inter-American Juridical Committee in attendance.

Accept, Excellency, the renewed assurances of my highest consideration.

João Clemente BAENA SOARES,
Secretary General.

His Excellency Ambassador Pablo Mauricio Alvergue,
Chairman of the Permanent Council
of the Organization of American States,
Washington, D.C.

Inter-American Juridical Committee,
Rio de Janeiro,
Brazil.

CJI 0/87 Rio de Janeiro, August 29, 1985.

My dear Mr. Secretary General:

I have the honor to inform you that in response to a decision taken by the Permanent Council on August 7 of this year, to request the Inter-American Juridical Committee to examine the American Treaty on Pacific Settlement (Pact of Bogota), taking into account the reservations made by the signatory States, as well as the reasons that some States might have for not ratifying it, in order to determine whether amendments need to be made to that instrument to ensure its viability, the Committee completed its work today, with the opinion that I have the pleasure to attach hereto. I am also sending you the Report that I submitted to the Committee as Rapporteur for this topic, as well as the Explanations of Votes provided by some of the members of the Committee: Dr. Roberto MacLean Ugarteche, Dr. Luis Herrera Marcano and Dr. Manuel A. Vieira.

The Inter-American Juridical Committee devoted a significant portion of its August session to this undertaking. It made it a priority, in view of the fact that the entire Organization is now committed to a process of amending the Charter of the OAS and other inter-American instruments, including the American Treaty on Pacific Settlement itself.

I would be most grateful if you would be kind enough to transmit the documentation in question to the Permanent Council and, through it, to the governments of the member States, and order that it be included among the Committee's other documents pertaining to this session, which will be published in the volume "Informes y Recomendaciones del Comité Jurídico Interamericano" for 1985.

Sincerely,

Galo LEORO F.,

Chairman, Inter-American Juridical Committee.

His Excellency Ambassador João Clemente Baena Soares,
Secretary General,
Organization of American States,
Washington, D.C.

Inter-American Juridical Committee,
Rio de Janeiro,
Brazil.

CJI/RES-II-13/1985

OPINION

ANALYSIS OF THE AMERICAN TREATY ON PACIFIC SETTLEMENT (PACT OF BOGOTÁ) TAKING INTO ACCOUNT THE RESERVATIONS MADE BY THE SIGNATORY STATES AS WELL AS THE REASONS THAT SOME STATES MIGHT HAVE FOR NOT RATIFYING IT, SO AS TO DETERMINE WHETHER AMENDMENTS NEED TO BE MADE TO THAT INSTRUMENT TO ENSURE ITS VIABILITY

I. BACKGROUND

Bearing in mind the special interest that the Organization of American States has in conducting studies of the major inter-American legal instruments with a view to their amendment, as stated in resolution AG/RES.745 (XIV-0/84), adopted by the General Assembly of the OAS in Brasilia in November of 1984, and in response to the express request made of it by the Permanent Council of the Organization, the Inter-American Juridical Committee undertook an examination of the American Treaty on Pacific Settlement (Pact of Bogotá) taking into account the reservations made by the signatory States as well as the reasons that some member States might have for not ratifying it, so as to determine whether amendments need to be made to that instrument to ensure its viability. The text itself also dovetails with what the Committee itself suggested in its resolution of August 21, 1984, titled "A study on the procedures provided in the Charter of the Organization for the peaceful settlement of disputes and further steps that might be taken to promote, modernize, or expand such procedures".

The Chairman of the Committee conveyed the request verbally. He had been present at a meeting held by the Committee on Juridical and Political Affairs of the Permanent Council in late July, where the idea had taken shape. Later, through a cable dated August 16, 1985, the Chairman of the Permanent Council of the OAS confirmed for the Committee that at its meeting of August 7, that body had in effect decided to make that request of the Inter-American Juridical Committee.

At its meeting of August 5, the Committee appointed Ambassador Galo Leoro F. as Rapporteur for the subject. He made various statements at a number of meetings, analysing in detail the Pact of Bogotá and its technical problems and other problems, examining how these bear upon its viability. At the meeting held on August 20, he also presented a report, dated August 19 (CJI-SO/11, attached hereto) containing an analysis of the various aspects of the Pact which, in his view, are questionable and point up problems with respect to the applicability of the Pact if the parties had to resort to its procedures. The Committee decided to use the Report of the Rapporteur as a working paper and to continue with the analysis of the Pact, which began on and continued at the meetings held on August 6, 8, 10, 12, 13, 15, 20, 21, 22, 23, 24, 28 and 29.

II. Reform of the Inter-American System

At various points in time, the member States of the OAS have sought reforms in the inter-American system.

The system developed within a legal framework established by resolutions passed by the International Conferences of American States. Many of the declarations from those conferences contain principles that point up a constant effort to surmount problems. The most significant reform made in the system was the signing of the Charter of the OAS in 1948 when an organization that had developed over the course of several decades was contractually instituted. That contractual transformation was the climax of an essential undertaking that began with the Inter-American Treaty of Reciprocal Assistance, adopted in Rio de Janeiro in 1947, and culminated with the American Treaty on Pacific Settlement or "Pact of Bogota" and the other invaluable inter-American instruments that address social rights, human rights, economic relations, all on a substantive and structural scale that was without precedent. After 1945, in order to survive the regional system had to be instituted contractually and adapt itself to the highest international standards of the United Nations Charter.

Here in Rio de Janeiro in 1965, the Second Special Inter-American Conference would begin efforts to redirect the inter-American system toward more ambitious goals for the economic and social development of its American States. It would also adopt resolution XIII to "strengthen the capacity of the Organization to give the member States effective aid in the peaceful settlement of their disputes", giving the Council of the Organization the necessary powers. The Protocol of Buenos Aires, signed in 1967 as a result of the new direction adopted in Rio, brought certain normative and structural changes to the Organization. It makes the Councils equal from the legal standpoint and changes the name of some of the organs. But it does not alter the basic principles. The economic and social standards were enlarged upon, as were those concerning education, science and culture, with the emphasis on development. The Permanent Council was given the same powers as those given to the Inter-American Peace Committee in its 1956 Statutes, in effect at that time.

In 1973, another reform movement would lead to the establishment of CEESI, a special committee charged with studying the inter-American system and proposing amendments to its instruments in order to modernize the Organization and find the means to give it a better internal political balance and to increase the opportunities for co-operation among its members, under the general banner of a Third-World approach and détente in international affairs, evident at that time both on the world scene and on the inter-American scene. CEESI produced a considerable number of volumes. It developed draft amendments to the Charter and to the Rio Treaty and proposed two new draft conventions on co-operation for integral development and collective economic security. The only draft ultimately enacted was the amendment of the Rio Treaty. The Protocol in question was signed in San José, Costa Rica, in 1975, but has not yet entered into force.

The dormant intention to reform the inter-American system resurfaced again at the General Assembly held in Brasilia, the foundation being the work that CEESI had produced. The brief time frame allowed for this major undertaking means that the bodies responsible for this vast project have to prepare their drafts quickly.

There is, therefore, an ever-present concern to adapt and improve the instruments of the OAS to suit increasing political, social and economic needs in the countries of the hemisphere and to be in step with the changing international scene.

The idea of strengthening the Organization at its very foundation also signifies a desire to make it a more effective means of achieving its major objectives, which range from maintenance of peace through collective security and peaceful settlement of disputes, to observance of human rights and inter-American co-operation in all fields.

This effort to renew the system comes at a time when the most serious economic-financial crisis endangers social tranquillity and threatens to paralyse the development of most American countries.

The situation of the Pact of Bogotá has been a source of concern for the Organization since 1954; at that time the International Conference of American States held in Caracas adopted resolution XCIX whereby it ordered the then Council to conduct an inquiry among the member States to "ascertain the suitability of, and the appropriate opportunity for proceeding to revise the American Treaty on Pacific Settlement"; if the results were positive, the Inter-American Council of Jurists and the Inter-American Juridical Committee were to study the possibility of amending the Pact of Bogotá. The outcome would not have favored amendment of the Treaty.

Later, at the first regular session of the General Assembly held in San José, Costa Rica, in 1970, the General Assembly adopted resolution 54 wherein the Inter-American Juridical Committee is requested, based on the provisions of Article 26 of the Charter, to conduct a study of the experience acquired from application of the instruments for peaceful settlements of disputes, in order to strengthen the inter-American system for the maintenance of peace. In its opinion of September 8, 1971, the Committee said that the best means to strengthen the system would be for those States that had not yet ratified the Pact of Bogotá to do so.

The advisability of amending the Pact of Bogotá was raised at CEESI in 1973. Although no position materialized in this respect, CEESI decided that the matter should be examined on some future occasion.

Today the Committee has been entrusted with studying the Pact of Bogotá: the Committee had suggested that very thing in its own opinion of August 21, 1984. The fundamental purpose would be to facilitate a general consideration of the measures that should be taken to modernize the inter-American system overall, with a view to strengthening it and endeavoring, by every means possible, to make inter-American co-operation more effective, in this specific case in the field of peaceful settlement of disputes.

The Pact of Bogotá and the Inter-American Treaty of Reciprocal Assistance — Instruments for the Maintenance of Peace

The Pact of Bogotá and the Inter-American Treaty of Reciprocal Assistance are the instrumental means for carrying out the objectives set forth in the Charter with respect to maintenance of the peace. The first is the Organization's response to the need to settle international disputes between its members peacefully; the second is a collective response to aggression and other attempts against the territorial integrity, sovereignty and independence of the member States, under the terms and according to the characteristics that those instruments establish for each one of their respective spheres of action.

The fact that the Charter of the OAS makes reference to those two special treaties, which differ in their nature and sphere of application but are the same in terms of purpose — that being the maintenance of peace —, naturally prompts me to examine how they are applied, which is frequent and wide-ranging in the case of the Rio Treaty, and non-existent in the case of the Pact of Bogota. The Rio Treaty has been ratified by the vast majority of the member States, while the Pact of Bogota has been ratified by an obvious minority. While the Rio Treaty was amended by the Protocol of San José, in 1975, the Pact of Bogota has remained unchanged.

Naturally, the most striking fact of all is that the Pact has never been invoked by its parties to settle their disputes peacefully. If Honduras and Nicaragua resorted to its procedures in 1957, it was only because the Permanent Council, acting provisionally as organ of consultation, had recommended that measure and the two member States took their dispute to the International Court of Justice to resolve the controversy over the 1906 Award.

Thus, there has been no balance between the two fundamental sides of the maintenance of peace within the OAS, those being collective security and peaceful settlement of disputes. In practice, the Organization's main objective with respect to peaceful settlement of disputes has not been served. This may be because resolution has been sought through Article 7 of the Inter-American Treaty of Reciprocal Assistance, which provides the following:

> "In the case of a conflict between two or more American States, without prejudice to the right of self-defense in conformity with Article 51 of the Charter of the United Nations, the High Contracting Parties, meeting in consultation, shall call upon the contending States to suspend hostilities and restore matters to the *status quo ante bellum*, and shall take in

> addition all other necessary measures to reestablish or maintain inter-American peace and security *and for the solution of the conflict by peaceful means*. The rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon."

Perhaps several instances where the Rio Treaty was invoked can be better explained if one considers that the Organization did not have an organ that, at the request of one of the parties or on its own initiative (as happened with the Inter-American Peace Committee, before it was changed in May 1956), could recommend to the contending States suitable measures or means for finding a solution to their dispute.

Thus, under certain circumstances, the American States have had to invoke the Inter-American Treaty of Reciprocal Assistance, an instrument whose organ acts at the request of one of the parties and, in certain cases, when convoked by the Chairman of the Permanent Council (Article 63 of the Charter). Under Article 7, cited earlier, it is called upon to play an important role in achieving pacification and even to finding a solution to the conflict via peaceful means. Naturally, the best thing for the member States and for the inter-American system would be for the methods of peaceful settlement to be as effective as the Rio Treaty's methods, even more so if possible.

A desire to achieve that parity, or at least some balance in the use of the two means for maintaining peace within the inter-American system, is what doubtless has prompted the member States to try to alter those aspects of the fundamental instruments that, experience has shown, do not function or have not functioned in the past. In the Committee's judgment, the situation noted in the case of the Pact of Bogotá holds true in the case of the OAS Charter as well, since the task assigned to the Permanent Council and to the Inter-American Committee on Peaceful Settlement, under Articles 82 through 90, is just as difficult since it cannot, at the request of only one of the parties or on its own initiative, lend its good offices to bring the parties together and suggest means for settling disputes between member States. In its opinion of August 21, 1984, the Committee suggested amendments to the Charter to correct that problem.

The Pact of Bogotá

This instrument is provided in Article 26 of the Charter so that it will

> "establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application, so that no dispute between American States shall fail of definitive settlement within a reasonable period".

The Pact of Bogotá was to be a codification of those treaties on peaceful settlement existing within the inter-American system and listed in Article LVIII thereof. That Article provides that once the Treaty comes into effect, the earlier conventions shall cease to be in force with respect to the Parties thereto.

The American Treaty on Peaceful Settlement went beyond just codifying those conventions, as said before; an effort was made to co-ordinate it with the provisions of the United Nations Charter and significant restrictive standards were introduced vis-à-vis its application and others such as the sequence of steps the parties would be compelled to follow if the procedure of conciliation was invoked from the outset.

Thus, the Pact of Bogotá could be described as an inter-American treaty for peaceful settlement of disputes that contains restrictive general standards concerning its application; that describes, one by one, the procedures of good offices, mediation, investigation and conciliation, both judicial and arbitral, that are available to the parties; that does not establish the pre-eminence of any one method over another or any obligation to initiate the procedures; instead, if either of the parties invokes the procedure of "investigation and conciliation" (Article XVI) and any party may request the Permanent Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. If the Commission's efforts are unable to produce a solution, this entitles either of the parties, if they have not agreed upon an arbitral procedure, to have recourse to the International Court of Justice. In this case, the Court shall have compulsory jurisdiction, in accordance with Article 36, paragraph 1, of its Statute (Article XXXII). If the Court, which has the right to decide on its own jurisdiction (Article XXXIII), should declare itself without jurisdiction to hear the controversy, for the general reasons mentioned in Articles V, VI and VII of the Treaty, the controversy shall be declared ended (Article XXXIV); but if the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the contracting parties are obligated to submit it to arbitration in accordance with the provisions of the pertinent Chapter of the Pact (Article XXXV). In any event, recourse to the International Court of Justice is available to the parties inasmuch as they declare that they recognize the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the Treaty may be in effect, in all disputes of a juridical nature that are specified in the text of the Pact itself (Article XXXI).

This is the system set up under the Pact of Bogotá with respect to the automatic sequence of procedures. When matters reach the point of compulsory arbitration, should one of the parties fail to designate its arbiter and/or fail to present its list of candidates within a period of two months, the other party shall have the right to request the Permanent Council of the Organization to establish the Arbitral Tribunal, in accordance with the manner established in the Pact itself (Article XLV). If, moreover, the parties fail to draw up an agreement clearly defining the specific matter that is the subject of the controversy within three months as of the date the Tribunal is installed, that agreement "shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the parties" (Article XLIII).

The latter sequence and the legal possibility that arbitration could be done without one of the States parties to the dispute participating is what has come to be called the automatism of the Treaty and arbitration by default, respectively.

Examination of the Pact

The Committee conducted its examination bearing in mind the sense of the Permanent Council's request of the Inter-American Juridical Committee and the advisability of trying to make the Pact of Bogotá more viable. Nonetheless, it was fully aware that the time limitation was such that it would not be able to look into the possible reasons why so many member States of the OAS have not ratified the Pact. This would have meant contacting several government and non-government sources to supply suitable information on this subject. To do this, an adequate time frame would have been necessary, as would the willingness of those sources to supply concrete information, if that information is available. The Committee did not go into that aspect of the topic for that reason.

Although the Committee examined each one of the procedures in their entirety, to substantiate the Committee's position as clearly as possible, it has made specific reference to those articles for which the Committee is recommending amendments.

CHAPTER ONE

Article II: The first paragraph of this article is poorly worded, inasmuch as it is not possible to *recognize the obligation to settle* international controversies by regional pacific procedures before referring them to the Security Council of the United Nations since, if those controversies were resolved, there would be nothing to bring to the Security Council. This point ought to be corrected for this reason, and in order to co-ordinate the texts of the inter-American instruments. Therefore, the Committee feels that this article could be worded in a manner similar to that used in the Protocol of Amendment to the Inter-American Treaty of Reciprocal Assistance in the amendment of Article 2 thereof. In the Protocol, it is now clear that it is not compulsory to exhaust regional remedies before going to the UN Security Council or to the General Assembly, in accordance with Article 52, paragraph 4, of the United Nations Charter. That point is also addressed in the Committee's opinion of August 21, 1984. Dr. Roberto MacLean felt that that paragraph need not be included at all.

Furthermore, the Committee approved a draft amendment to this article, presented by Dr. Emilio Rabasa. The purpose was to make the Pact more precise and broader on two points: *(a)* the special procedures, that the parties may elect to find a solution; and *(b)* that the provision — and ultimately the Pact — encourage and embrace certain initiatives that the member States of the Organization of American States may undertake for the peaceful settlement of disputes.

The draft amendment approved means that the final part of the second paragraph of Article II would be deleted. That part reads as follows: "or, alternatively, such special procedures as, in their opinion, will permit them to arrive at a solution". This would be replaced by two separate paragraphs, to follow immediately after the second paragraph, and to read as follows:

> "In addition to the procedures established in this Pact, the parties to a controversy may, by common agreement, opt for any other suitable and expeditious means.
>
> Furthermore, any Member State or group of Member States of the Organization of American States, with the prior and express consent of all parties to a given dispute, may assist in the manner they deem appropriate, in resolving the dispute peacefully."

When continuing with the examination, the Rapporteur recalled that in the draft amendments to the Charter produced by CEESI and reviewed by the Permanent Council, and in the current draft in process in its Committee on Juridical and Political Affairs, those articles that discuss peaceful settlement of disputes make reference to "existing" controversies rather than those that "arise or may arise" between States parties.

The Rapporteur also pointed out that in inter-American treaties such as the one on Conciliation or the one on Arbitration (1929), reference is made to controversies that "have arisen or may arise". Article XXXVIII of the Pact itself calls arbitration a procedure for differences of any kind that "have arisen or may arise" in the future between the parties. This text leaves no doubt whatever that the provision embraces not just potential future controversies but rather all controversies. The corresponding article of the Protocol of Amendments to the Inter-American Treaty of Reciprocal Assistance also took this approach when it amended the current wording of Article 2 of the Rio Treaty to read as follows:

> "As a consequence of the principles set forth in the preceding article, the High Contracting Parties undertake to settle their disputes with one another by peaceful means. The High Contracting Parties shall make every effort to achieve the peaceful settlement of disputes through procedures and mechanisms provided for in the inter-American system before submitting them to the Security Council of the United Nations. This provision shall not be interpreted as an impairment of the rights and obligations of the states parties under articles 34 and 35 of the Charter of the United Nations."

When paragraph 2 was put to a vote, with the amendment suggested by the Rapporteur, it was approved by seven votes. Dr. MacLean indicated that he preferred the present wording of the text of the Pact. The text so approved is the following:

> "Consequently, should there be a controversy between two or more signatory States which . . .", etc.

The text of paragraph 2 of Article II was also reviewed with respect to the discrepancy created by the fact that the Pact makes reference to the fact that in the event that a controversy arises between two or more signatory States which, "*in the opinion of the parties*", cannot be settled by direct negotiation, the parties bind themselves to use the procedures established in the Treaty. On the other hand, Article 25 of the OAS Charter provides that in such a circumstance it would suffice to have the "opinion *of one* of them" that the controversy cannot be settled through the usual diplomatic channels, thus allowing recourse to any of the means the Pact provides.

Here the Rapporteur himself added to his own information on this point by citing an explanatory note that appears in a study prepared by Dr. Juan Carlos Puig, entitled "The Inter-American Treaty of Reciprocal Assistance and the Contemporary International System", published in the 1983 edition of the *Anuario Juridico* of the Organization of American States, page 173. That note and the documentation cited therein contend that the change in the Spanish version of the Pact of Bogota was due to a typing error. The note goes on to say that the French text is consistent with that of the Charter of the Organization and is equally authentic. It was established that the French text follows the text of the draft prepared by the Inter-American Juridical Committee in 1947 and that of Article 25 of the OAS Charter.

Although there was a motion by the Rapporteur that an adjustment in the text be recommended to make it consistent with the French version, which was in complete agreement with Article 25, the amendment voted on for that particular phrase of the second paragraph of Article II was that it read "in the opinion of one of the parties". That amendment carried the votes of Drs. Leoro, Vieira, Callejas Bonilla, Rabasa and Waaldijk.

Dr. Herrera Marcano motioned that the phrase in question "in the opinion of the parties" be deleted. When a vote was taken, only two favorable votes were cast, that of the proponent and that of the Chairman who said that he voted for this second draft amendment as an alternative that would have at least improved the text of the article.

Hence, the Committee is suggesting that Article II of the Pact read as follows:

> "*Article II:* The High Contracting Parties shall make every effort to achieve the peaceful settlement of international disputes among themselves through regional peaceful procedures, before submitting them to the General Assembly or to the Security Council of the United Nations.
>
> This provision shall not be interpreted as an impairment of the rights and obligations of the States parties under Article 52, paragraph 4, of the Charter of the United Nations.
>
> Consequently, should there be a controversy between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles.
>
> In addition to the procedures established in this Pact, the parties to a controversy may, by common agreement, opt for any other suitable and expeditious means.
>
> Moreover, any Member State or group of Member States of the Organization of American States, with the prior and express consent of all parties to a controversy, may assist in the manner they deem appropriate in resolving the controversy peacefully."

Article V: With respect to this article, which provides that the procedures of the Pact may not be applied to matters "which, by their nature, are within the domestic jurisdiction of the State", it was agreed to leave the text as is, even though a member of the Committee, Dr. Luis Herrera Marcano, submitted a draft amendment worded as follows:

> "The present Treaty shall not be applied to matters that, by their nature, are within the domestic jurisdiction of the State. Upon ratifying this Treaty, or at any time thereafter, each State may declare that it accepts the compulsory jurisdiction of the International Court of Justice to settle any dispute as to whether or not a matter is, by its nature, within the domestic jurisdiction of a State."

A subamendment proposed by Dr. MacLean added the words "on the basis of reciprocity" so that the amendment would read: ". . . may declare that it accepts, on the basis of reciprocity, the compulsory jurisdiction . . .", etc.

Two votes were cast in favor of that draft amendment. The other members voted against it.

Article VI: With respect to this article, which provides that

> "The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty",

the Committee agreed to make the clarification suggested by the Rapporteur. Under international law and as embodied in instruments such as the "Vienna Convention on the Law of Treaties", when circumstances such as those described under Chapter V of that Convention obtain, this paves the way for legitimate action on the part of the State vis-à-vis treaties being void or valid.

which is a point that is entirely different from the provision contained in Article VI of the Pact. In effect, a treaty neither resolves nor can it resolve the question of whether or not it is valid. These questions would have to be resolved, but never resolved by the treaties themselves. Hence, the principle *pacta sunt servanda* does not apply to them and they are not included under the provision of the Pact of Bogota in question. In this respect, Dr. MacLean felt that the clarification was redundant.

Dr. Herrera Marcano, for his part, proposed that the phrase "the aforesaid procedures . . . may not be applied" be replaced by "the present Treaty shall not be applicable . . .". This wording received one vote.

Article VII: There was an interesting discussion concerning a well-entrenched Latin American principle dating back to the Calvo and Drago doctrines. The conclusion reached was that under the present circumstances the provision was a very important step toward preventing any diplomatic representation from protecting a national and from referring a controversy to a court of international jurisdiction for that purpose when said national has been afforded the means to place his case before the competent domestic courts of the respective State.

Dr. Herrera Marcano was of the view that it would be best to delete that article, in order to avert any tacit recognition of diplomatic protection.

He emphasized that the underlying assumption of diplomatic protection was the denial of justice and that the provisions of the American Convention on Human Rights in this respect ought to be taken into account. He submitted a draft to replace Article VII, which reads as follows: "Any controversy between the parties that concerns the existence or nonexistence of a case of denial of justice, shall be governed by the provisions of the American Convention on Human Rights." The proposal received only one vote.

Article VIII: When the text of this article was discussed, two of the members concurred that the provision could easily be deleted since it seemed to them superfluous. The Committee felt that it would be best to retain the article as it is presently worded.

CHAPTER TWO

Procedures of Good Offices and Mediation

Chapter Two, which covers the "Procedures of Good Offices and Mediation", was the subject of minor observations.

The Committee decided that Articles IX and XI ought to be amended so that the eminent citizens that provide their good offices or mediation should be citizens of not just "any American State", but rather "eminent individuals" of any nationality. The Committee agreed on that point and recommended that the amendment be introduced in Articles IX and XI.

As a result of the amendment recommended for Article IX, Article X was changed to read "the individuals" rather than "the citizens".

The articles in question would be worded as follows:

> "*Article IX:* The procedure of good offices consists in the attempt by one or more American Governments or one or more eminent individuals not a party to the controversy, to bring parties together, so as to make it possible to reach an adequate solution between themselves.
>
> *Article X:* Once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the State

> or individuals that have offered their good offices or have accepted an invitation to offer them; they may, however, by agreement between the parties, be present at the negotiations.
>
> *Article XI:* The procedure of mediation consists in the submission of the controversy to one or more American Governments not parties to the controversy, or to one or more eminent individuals not a party to the controversy. In either case, the mediator or mediators shall be chosen by mutual agreement between the parties."

Article XIII: During the discussion of this article, it was noted that the deadline given to the parties to reach an agreement on the choice of the mediator or mediators (two months) and that given for mediation to begin and to reach a solution (five months), would seem to be very short, particularly the latter. The circumstances of a given controversy ought to be taken into account so as to extend those deadlines, whenever necessary.

CHAPTER THREE

Procedure of Investigation and Conciliation

The entire chapter on this procedure was examined. The view was that the method for setting up a Commission of Investigation and Conciliation ought to be simplified. Under the terms of the Pact of Bogotá, a series of bilateral notes between the States Parties and a large number of conciliators are required, over and above the Permanent Panel of American Conciliators.

Dr. Herrera Marcano adhered to the position reflected in the following draft amendment for Article XV, which he presented to the Committee for its consideration:

> "Upon ratifying this Treaty or at any time thereafter, each State may declare that it accepts, on the basis of reciprocity, the obligation to submit to conciliation, based on the terms of the present Treaty, any controversy that may arise between it and any other State Party."

When voted on, the proposed amendment did not win a majority of the votes.

For his part, the Chairman said that as he had said in his rapporteur's report, he was submitting a draft amendment to the Committee which he suggested be the first paragraph of what is now Article XV.

He went on to say that in his view, in the event of a controversy, conciliation ought to be binding upon the parties. The precedent was Article 1 of the General Convention on Inter-American Conciliation (1929), and Article 4 of the European Convention for Peaceful Settlement of Disputes (1957), and another article in the Revised Act for the Peaceful Settlement of Disputes of the United Nations (1949). He said that a Treaty of this nature ought to foster fulfillment of the principles on peaceful settlement, reflecting practical acceptance of those principles by an agreement to submit to a compulsory procedure, one such as the procedure in question, conciliation, which was so flexible and so useful. He added that to complement this draft amendment, he would in due course present another to the effect that if a controversy was not settled by conciliation, this ought not necessarily lead to a case before the International Court of Justice or to arbitration, this being something optionally agreed upon by the parties. In this way, conciliation would clearly be a compulsory recourse that would not necessarily be automatic and that could serve its functions without further problems were it binding upon the parties.

The draft amendment that he submitted to this effect read as follows: "The High Contracting Parties shall submit all controversies that exist between them to conciliation."

Five Committee members voted in favor of this proposal: Dr. Leoro, Dr. Callejas Bonilla, Dr. Rabasa, Dr. Vieira and Dr. Ortiz Martín.

As for Articles XVII, XVIII and XIX and with the view to simplifying the method for setting up the Commission of Investigation and Conciliation to serve in the controversy concerned, the Committee approved the amendments suggested by a working group made up of Drs. Leoro, Vieira and Herrera Marcano. These were based on others originally drawn up by the Representative of the General Secretariat and then adjusted by that working group.

The texts that the Committee agreed upon for these articles are as follows:

> "*Article XVII:* Each of the High Contracting Parties may appoint four individuals held in high regard for their impartiality, competence, and sense of honor and willing to accept the functions of conciliator. Only two of these shall be nationals of that State Party.
>
> Any of the Contracting Parties may replace the individuals they designate.
>
> The appointments and replacements shall be registered with the General Secretariat of the Organization of American States.
>
> In the absence of such appointments, it shall be understood that the State is appointing the members of its national group from the Permanent Court of Arbitration of The Hague.
>
> *Article XVIII:* Using the list of individuals referred to in the preceding paragraph, the General Secretariat shall form a Permanent Panel of American Conciliators.
>
> *Article XIX:* In establishing the Commission of Investigation and Conciliation referred to in Article XVI, the following procedures shall be followed:
>
> *(a)* each Party may designate one or two members from the Permanent Panel of American Conciliators, who shall not be nationals of the appointing State;
> *(b)* these two or four members shall in turn select, from the Permanent Panel, a third or fifth conciliator, as the case may be, who shall not be a national of either of the parties;
> *(c)* if within thirty days of having been notified of their selection, the members referred to in subparagraph *(a)* are unable to reach an agreement on the choice of the third or fifth member, each one shall separately draw up a list of conciliators, drawing from the Permanent Panel and listed in the order of preference; after comparing the lists so prepared, that member who first receives a majority of votes shall be declared selected. The individual so selected shall serve as Chairman of the Commission."

CHAPTER FOUR

Judicial Procedure

One of the features of the Pact has been recognition of the compulsory jurisdiction of the International Court of Justice for controversies considered to be of a legal nature under the terms of Article XXXI. To amend this important point, Dr. Herrera Marcano proposed that the article read as follows:

"When ratifying the present Treaty or at any time thereafter, each State may declare that it recognizes, on the basis of reciprocity, with respect to any other American States . . ., etc."; the rest of the text would remain the same.

The proposal did not receive the votes needed to be approved and therefore the text of Article XXXI of the Pact would remain as is.

In reference to Article XXXII, which institutes the automatic procedure when a controversy has not been solved by means of conciliation, Dr. Herrera Marcano proposed an amendment, worded as follows:

> "When ratifying the present Treaty or at any time thereafter, each State may declare that it accepts, on the basis of reciprocity, as binding *ipso facto*, the jurisdiction of the Inter-American Court of Justice with respect to any controversy that has been submitted to conciliation under the terms of this Treaty and that has not been resolved, without the need for any special intervention so long as this Treaty remains in effect."

This proposal received one vote.

For his part, Dr. Vieira said that a different approach might be to word the text as follows: "If a conciliated agreement is not reached, any of the other procedures for peaceful settlement established in this Treaty shall be instituted without delay."

The Chairman said that either way, the amendments suggested would put an end to any form of automatism within the Pact; he went on to say that perhaps some consideration ought to be given to finding some method, as he had suggested as Rapporteur for the topic, that would allow any State that so desired to opt for the automatic procedure.

With that in mind, he submitted a draft amendment to Article XXXII for consideration. That amendment was approved by a vote of six in favor and one against. The text is as follows:

> "When the procedure of conciliation established in accordance with this Treaty does not lead to a solution, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of said Statute."

Drs. Herrera Marcano and Vieira then proposed the deletion of Articles XXXIII, XXXIV and XXXV, in the view that these were the articles that led to the next step of arbitration by default which, in their judgment, was an unworkable means of settlement. They went on to say that the other articles in this chapter were redundant, since they simply repeated the content of the Statute of the International Court of Justice.

In regard to that proposal, the Chairman said that this would mean an end to compulsory arbitration and arbitration by default in the Pact, which would still be an option, even with the new wording adopted by the Committee for Article XXXII. He said that if the Committee favored deletion of that type of arbitration, which was one of the possibilities he had pointed up in his report, he would vote in favor of deletion of those articles if a motion were made to that effect.

A motion was made and when put to a vote deletion of Articles XXXIII, XXXIV, XXXV, XXXVI and XXXVII was approved by the Committee.

At the request of Dr. Ortiz Martin, it should be noted here that he voted against deletion of Article XXXIII. Deletion of the other articles was approved by a consensus.

Therefore, under the Pact's Judicial Procedure, the Committee's recommendation would leave only Article XXXI, as it is now worded, and Article XXXII, in its amended version shown above.

CHAPTER FIVE

Procedure of Arbitration

When discussion began on this Chapter, which concerns the Pact's Procedure of Arbitration, the Chairman proposed the following draft amendment, bearing in mind the draft amendments adopted by the Committee for Chapter Four to simplify and co-ordinate the text of Article XXXVIII and to remove from it the inappropriate concept whereby, under the terms of the Pact, the parties may, if they so agree, submit to arbitration differences of any kind: "The High Contracting Parties, if they so agree, shall submit to arbitration differences of any kind that may exist between them."

The above proposal received four votes. Dr. MacLean said that he did not vote in favor of that proposal because he had abstained on the earlier articles.

A vote was then taken on a formula proposed by Dr. Herrera Marcano. Its text read as follows:

> "When ratifying the present Treaty or at any time thereafter, each State Party may declare that it accepts, on the basis of reciprocity, the obligation to submit to arbitration, in accordance with the following provisions, any controversy to which the present Treaty applies."

That draft received one vote.

When neither of the two amendments proposed for Article XXXVIII carried, the Chairman said that it would seem absolutely essential that at least the opening phrase of this provision be dropped: with deletion of Articles XXXIII through XXXVIII of the Pact, it would no longer make sense. He submitted the following text to the Committee's consideration, which was approved by a consensus:

> "*Article XXXVIII:* The High Contracting Parties may, if they so agree, submit to arbitration differences of any kind, whether juridical or not, that have arisen or may arise in the future between them."

There was also a consensus in favor of an amendment proposed for Article XXXIX, consisting of the deletion of the words "in the cases contemplated in Articles XXXV and XXXVIII of the present Treaty", since any reference to Article XXXV was particularly pointless now that the Committee had recommended its deletion. Therefore, the text agreed upon was as follows:

> "*Article XXXIX:* The Arbitral Tribunal to which a controversy is to be submitted shall be constituted in the following manner, unless there exists an agreement to the contrary."

Following an exchange of views and in response to a motion made by Dr. Emilio Rabasa, a Working Group was established, made up of Drs. Leoro, Vieira and Herrera, to present a working paper containing suggested amendments for the remaining articles, bearing in mind the progress made thus far by way of amendments to the Pact. Any members that so desired could join the Group.

The Working Group presented a document, dated August 24, containing its recommendations. That document is attached.

Having examined that document and having heard the reasons why the Working Group had suggested the amendments in question, the Committee as a whole, at odds with the Working Group's position but with the consent of its members, recommended the deletion of Article XXXIX, since in effect the provision contained therein was not necessary, not even with the amendment introduced by the Working Group.

Following the group's recommendation, the Committee agreed to make what is now Article XLI, Article XL and to make Article XL Article XLI, since this would seem to be the more logical order for those provisions.

At the same time, since present Article XL (XLI in the Committee's recommended version) makes reference to a two-month time period from the time of "notification of the Court's decision in the case provided for in Article XXXV", and since the opportunity for the Court to render judgment was eliminated when deletion of Article XXXV was recommended, the Committee decided, by a consensus, to approve the amendment proposed by the Group, so that the two-month time period be counted as "of the date of the agreement" between the parties to submit a controversy to arbitration. Further, the Group recommended that at the beginning of the article, specific reference be made to the preceding article in the Pact. Therefore, the Committee recommended that the article be worded as follows:

> "*Article XLI:* If the procedure set forth in the preceding article is not carried out within two months of the date of the agreement, each party shall name one arbiter of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Permanent Council of the Organization of American States. At the same time . . ."

In connection with Article XLIII, paragraph two, the Group suggested the following wording:

> "If the special agreement cannot be drawn up within three months after the date of the *installation* of the Tribunal (as the article is now worded), it shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the Parties, *unless the Parties instruct the Tribunal to draw up said agreement.*"

The Committee felt that it would be better to substitute the word "installation" with "formation" since the membership of the Tribunal would be determined before it was installed; installation is, in all likelihood, something that would have to be determined in the agreement to which this article refers.

The consensus on the Committee was to approve the phrase italicized above at the end of the second paragraph of Article XLIII, so that the Parties could also go to the Tribunal itself to have that agreement drawn up. There is a similar provision in Article IV, paragraph two, of the General Treaty of Inter-American Arbitration, which is in force with respect to a number of member States of the Organization of American States.

Thus, there being no amendment to the first paragraph, the Committee recommended the following wording for the second paragraph of Article XLIII:

> "If the special agreement cannot be drawn up within three months of the date of the formation of the Tribunal, it shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the Parties, unless the Parties instruct the Tribunal to draw up said agreement."

The consensus on the Committee was to delete Article XLV, as the Working Group had recommended, since Article XXXV had already been deleted, which was one of those that had led to arbitration by default. Having deleted that provision, the Committee was of the view that this obligatory procedure ought not to be retained, one whereby the Permanent Council would have to intervene to establish the Tribunal of Arbitration if any Party failed to designate the arbiter.

The Committee had no observations with respect to Articles XLVI, XLVII and XLVIII of the Pact.

Following the Working Group's suggestion, it was decided to delete from Article XLIX the stipulation to the effect that if the parties do not agree on the amount of financial remuneration, the Permanent Council of the Organization shall determine said remuneration. If arbitration is conducted in accordance with the amendments being suggested, i.e., only by mutual agreement of the parties, then said parties should have no difficulty in agreeing upon those expenses. With arbitration by default, which the Committee decided to delete, the possibility of such a problem was not so remote. The article in question was so approved, by consensus, to read as follows:

> "*Article XLIX:* Every member of the Tribunal shall receive financial remuneration, the amount of which shall be fixed by agreement between the Parties. Each Government shall pay its own expenses and an equal share of the common expenses of the Tribunal, including the aforementioned remunerations."

CHAPTER SIX

Fulfillment of Decisions

Although a question arose when the Committee discussed Article L — which is the only one in this chapter —, concerning what measures the Meeting of Consultation could agree upon should one of the parties fail to comply with the obligations imposed upon it by a decision of the International Court of Justice or an arbitral award, the Committee was in favor of retaining the article as it appears in the Pact. It felt that it was a potential means of resolving within the inter-American system the problem that the article itself poses, before it goes to the United Nations Security Council.

The conclusion reached was that, in any event, if any of the parties involved in a case of the kind provided for in Article 50 of the Pact wished to bring it to the Security Council, it would be free to do so under Article II of the Pact itself, if amended in the manner suggested by the Committee and, of course, in accordance with the provisions of Article 52, paragraph 4, of the United Nations Charter.

CHAPTER SEVEN

Advisory Opinions

Endorsing an amendment proposed for Article LI, suggested by Dr. Rabasa, the Committee decided, by a majority, that that article should also include the Inter-American Juridical Committee as one of the organs from which an advisory opinion could be requested.

The agreed upon text was as follows:

> "*Article LI:* The parties concerned in the solution of a controversy

may, by agreement, petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question. They may also request one of the Inter-American Juridical Committee.

In both cases, the petition shall be made through the Permanent Council of the Organization of American States."

CHAPTER EIGHT

Final Provisions

The Committee had no observations with respect to Articles LII, LIII, LIV, LV, LVI, LVII, LVIII, LIX and LX of the Pact.

Dr. Herrera Marcano proposed an amendment, by way of an additional article to be included among the final provisions. The text would read as follows: "Nothing in the present Treaty may be interpreted as impairing or replacing the provisions of the American Convention on Human Rights, signed in San José, Costa Rica, in 1969."

In connection with this proposal, views were expressed to the effect that it would be inadvisable to introduce such a provision, since the Committee had in no way recommended any amendment to the articles of the Pact that could be interpreted to impair the provisions of the American Convention on Human Rights.

Overall, the Committee was in favor of amending, throughout the Pact, the references to the Council of the Organization and to the Pan American Union, to replace them, respectively, with references to the Permanent Council and to the General Secretariat of the Organization of American States.

Having compiled the suggested amendments that the Inter-American Juridical Committee agreed upon, a chart was drawn up comparing the provisions, juxtaposing the recommended changes to the present text of the Pact. That chart is attached.

The Inter-American Juridical Committee examined the Pact of Bogotá and rendered its opinion on possible amendments with the obvious purpose of co-operating in the effort to make that instrument as viable as possible, since it ought to be applied extensively and constructively within the inter-American system.

If the suggested amendments are adopted, they would give the American Treaty of Pacific Settlement a new aspect.

It would become an inter-American instrument for the peaceful settlement of disputes, which would contain general restrictive standards concerning its applicability; it would outline, one by one, the procedures of good offices, mediation, investigation and conciliation, the judicial procedure and the arbitral procedure that the parties would have available to them; it would not establish any order with respect to the use of those methods, nor make recourse to them compulsory; however, if any party should resort to the procedure of "investigation and conciliation" provided for therein and if at the outset of this procedure the parties so agree, if no solution to the controversy is found by means o that procedure, any of the parties shall be entitled to recourse to the International Court of Justice in which case the jurisdiction of the Court shall be binding, in accordance with the first paragraph of Article 36 of its Statute (Article XXXII, as amended).

Moreover, under this new instrument, recourse to the International Cour of Justice would be open to the parties through recognition of the binding jurisdiction *ipso facto* without a need for any special convention so long as this Treaty is in effect, for all controversies of a juridical nature specified in the Treaty itself (Article XXXI).

If by agreement of the parties to a dispute for which no solution has been found by means of the procedure of Conciliation provided for in the Treaty, that controversy is to go to the International Court of Justice, then the case would go to that Court, in which case its jurisdiction would be binding for controversies of any kind, in accordance with Article 36, paragraph 1, of its Statute (Article XXXII, as amended). The procedures of Good Offices, Mediation and Arbitration will be agreed upon by the parties and, in the case of Conciliation, each party, separately, shall be entitled to turn to the Permanent Council for it to convoke a Commission of Investigation and Conciliation (Article XV).

Furthermore, it would allow for a wide range of possible friendly measures on the part of a State or group of member States to settle a controversy peacefully, whenever the parties to the controversy so consent. All of this is a clear recognition of the relevance of that kind of participation on the part of the States, which is observed in the Pact now in force.

Finally, in response to a motion made by Dr. Herrera Marcano, the Inter-American Juridical Committee agreed to make a general recommendation to the effect that the text of the amendments suggested in this document be duly co-ordinated with the texts of amendments adopted for the Charter of the OAS and other inter-American instruments.

It should be pointed out that at the start of the meetings held to examine the Pact of Bogota, all of the members of the Committee were present until August 17; Drs. Rubin and Vanossi were not present after August 20, and Dr. Rabasa did not participate from August 26 and thereafter. All these individuals had to leave Rio de Janeiro.

The Committee wishes to point out that Dr. Emilio Rabasa cast his vote for the adoption of all the recommendations made by the Committee, and also voted in favor of other draft amendments. Dr. Rabasa himself said in one of the meetings that had he been able to be present, he would have signed this report as well, and fully concurred with its recommendations.

Consequently, after having approved the recommended amendments discussed in this report and by the votes indicated therein, the Inter-American Juridical Committee presents below, in consecutive order, the draft amendments to the Pact of Bogota:

Chapter One

General Obligation to Settle Disputes by Pacific Means

Article I

The High Contracting Parties, solemnly reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have recourse at all times to pacific procedures.

Article II

The High Contracting Parties shall make every effort to achieve the peaceful settlement of international disputes among themselves through regional peaceful procedures, before submitting them to the General Assembly or to the Security Council of the United Nations.

This provision shall not be interpreted as an impairment of the rights and obligations of the States parties under Article 52, paragraph 4, of the Charter of the United Nations.

Consequently, should there be a controversy between two or more signatory States which, in the opinion of the parties, cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles.

In addition to the procedures established in this Pact, the parties to a controversy may, by common agreement, opt for any other suitable and expeditious means.

Moreover, any member State or group of member States of the Organization of American States, with the prior and express consent of all parties to a controversy, may assist in the manner they deem appropriate in resolving the controversy peacefully.

Article III

The order of the pacific procedures established in the present Treaty does not signify that the parties may not have recourse to the procedure which they consider most appropriate in each case, or that they should use all these procedures, or that any of them have preference over others except as expressly provided.

Article IV

Once any pacific procedure has been initiated, whether by agreement between the parties or in fulfillment of the present Treaty or a previous pact, no other procedure may be commenced until that procedure is concluded.

Article V

The aforesaid procedures may not be applied to matters which, by their nature, are within the domestic jurisdiction of the State. If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties.

Article VI

The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty.

Article VII

The High Contracting Parties bind themselves not to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective State.

Article VIII

Neither recourse to pacific means for the solution of controversies, nor the recommendation of their use, shall, in the case of an armed attack, be ground for delaying the exercise of the right of individual or collective self-defense, as provided for in the Charter of the United Nations.

CHAPTER TWO

PROCEDURES OF GOOD OFFICES AND MEDIATION

Article IX

The procedure of good offices consists in the attempt by one or more American Governments or one or more eminent individuals not a party to the controversy, to bring the parties together, so as to make it possible to reach an adequate solution between themselves.

Article X

Once the parties have been brought together and have resumed direct negotiations, no further action is to be taken by the State or individuals that have offered their good offices or have accepted an invitation to offer them; they may, however, by agreement between the parties, be present at the negotiations.

Article XI

The procedure of mediation consists in the submission of the controversy to one or more American Governments not parties to the controversy, or to one or more eminent individuals not a party to the controversy. In either case, the mediator or mediators shall be chosen by mutual agreement between the parties.

Article XII

The functions of the mediator or mediators shall be to assist the parties in the settlement of controversies in the simplest and most direct manner, avoiding formalities and seeking an acceptable solution. No report shall be made by the mediator and, so far as he is concerned, the proceedings shall be wholly confidential.

Article XIII

In the event that the High Contracting Parties have agreed to the procedure of mediation but are unable to reach an agreement within two months on the selection of the mediator or mediators, or no solution to the controversy has been reached within five months after mediation has begun, the parties shall have recourse without delay to any one of the other procedures of peaceful settlement established in the present Treaty.

Article XIV

The High Contracting Parties may offer their mediation, either individually or jointly, but they agree not to do so while the controversy is in process of settlement by any of the other procedures established in the present Treaty.

CHAPTER THREE

PROCEDURE OF INVESTIGATION AND CONCILIATION

Article XV

The procedure of investigation and conciliation consists in the submission of the controversy to a Commission of Investigation and Conciliation, which shall be established in accordance with the provisions established in subsequent articles of the present Treaty, and which shall function within the limitations prescribed therein.

Article XVI

The party initiating the procedure of investigation and conciliation shall request the Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. The Council for its part shall take immediate steps to convoke it.

Once the request to convoke the Commission has been received, the controversy between the parties shall immediately be suspended, and the parties shall refrain from any act that might make conciliation more difficult. To that end, at the request of one of the parties, the Council of the Organization of American States may, pending the convocation of the Commission, make appropriate recommendations to the parties.

Article XVII

Each of the High Contracting Parties may appoint four individuals held in high regard as to their impartiality, competence, and sense of honor and willing to accept the functions of conciliator. Only two of these shall be nationals of that State Party.

Any of the Contracting Parties may replace the individuals they designate.

The appointments and replacements shall be registered with the General Secretariat of the Organization of American States.

In the absence of such appointments, it shall be understood that the State is appointing the members of its national group from the Permanent Court of Arbitration of The Hague.

Article XVIII

Using the list of individuals referred to in the preceding paragraph, the General Secretariat shall form a Permanent Panel of American Conciliators.

Article XIX

In establishing the Commission of Investigation and Conciliation referred to in Article XVI, the following procedures shall be followed:

(*a*) Each party may designate one or two members from the Permanent Panel of American Conciliators, who shall not be nationals of the appointing State;
(*b*) These two or four members shall in turn select, from the Permanent Panel, a third or fifth conciliator, as the case may be, who shall not be a national of either of the parties;
(*c*) If within thirty days of having been notified of their selection, the members referred to in subparagraph (*a*) are unable to reach an agreement on the choice of the third or fifth member, each one shall separately draw up a list of conciliators, drawing from the Permanent Panel and listed in the order of preference; after comparing the lists so prepared, that member who first receives a majority of votes shall be declared selected. The individual so selected shall serve as Chairman of the Commission.

Article XX

In convening the Commission of Investigation and Conciliation, the Council of the Organization of American States shall determine the place where the Commission shall meet. Thereafter, the Commission may determine the place or places in which it is to function, taking into account the best facilities for the performance of its work.

Article XXI

When more than two States are involved in the same controversy, the States that hold similar points of view shall be considered as a single party. If they have different interests they shall be entitled to increase the number of conciliators in order that all parties may have equal representation. The chairman shall be elected in the manner set forth in Article XIX.

Article XXII

It shall be the duty of the Commission of Investigation and Conciliation to clarify the points in dispute between the parties and to endeavor to bring about an agreement between them upon mutually acceptable terms. The Commission shall institute such investigations of the facts involved in the controversy as it may deem necessary for the purpose of proposing acceptable bases of settlement.

Article XXIII

It shall be the duty of the parties to facilitate the work of the Commission and to supply it, to the fullest extent possible, with all useful documents and information, and also to use the means at their disposal to enable the Commission to summon and hear witnesses or experts and perform other tasks in the territories of the parties, in conformity with their laws.

Article XXIV

During the proceedings before the Commission, the parties shall be represented by plenipotentiary delegates or by agents, who shall serve as intermediaries between them and the Commission. The parties and the Commission may use the services of technical advisers and experts.

Article XXV

The Commission shall conclude its work within a period of six months from the date of its installation; but the parties may, by mutual agreement, extend the period.

Article XXVI

If, in the opinion of the parties, the controversy relates exclusively to questions of fact, the Commission shall limit itself to investigating such questions, and shall conclude its activities with an appropriate report.

Article XXVII

If an agreement is reached by conciliation, the final report of the Commission shall be limited to the text of the agreement and shall be published after its transmittal to the parties, unless the parties decide otherwise. If no agreement is reached, the final report shall contain a summary of the work of the Commission; it shall be delivered to the parties, and shall be published after the expiration of six months unless the parties decide otherwise. In both cases, the final report shall be adopted by a majority vote.

Article XXVIII

The reports and conclusions of the Commission of Investigation and Conciliation shall not be binding upon the parties, either with respect to the statement of facts or in regard to questions of law, and they shall have no other character than that of recommendations submitted for the consideration of the parties in order to facilitate a friendly settlement of the controversy.

Article XXIX

The Commission of Investigation and Conciliation shall transmit to each of the parties, as well as to the Pan American Union, certified copies of the minutes of its proceedings. These minutes shall not be published unless the parties so decide.

Article XXX

Each member of the Commission shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. If the parties do not agree thereon, the Council of the Organization shall determine the remuneration. Each government shall pay its own expenses and an equal share of the common expenses of the Commission, including the aforementioned remunerations.

CHAPTER FOUR

JUDICIAL PROCEDURE

Article XXXI

In conformity with Article 36, paragraph 2, of the Statute of the International Court of Justice, the High Contracting Parties declare that they recognize, in relation to any other American State, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the present Treaty is in force, in all disputes of a juridical nature that arise among them concerning:

(a) The interpretation of a treaty;
(b) Any question of international law;
(c) The existence of any fact which, if established, would constitute the breach of an international obligation;
(d) The nature or extent of the reparation to be made for the breach of an international obligation.

Article XXXII

When the procedure of conciliation established in accordance with this Treaty does not lead to a solution, either of them shall be entitled to have recourse to the International Court of Justice in the manner prescribed in Article 40 of the Statute thereof. The Court shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of said Statute.

Article XXXIII

(Deleted)

Article XXXIV

(Deleted)

Article XXXV

(Deleted)

Article XXXVI

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Article XXXVII

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CHAPTER FIVE

PROCEDURE OF ARBITRATION

Article XXXVIII

The High Contracting Parties may, if they so agree, submit to arbitration differences of any kind, whether juridical or not, that have arisen or may arise in the future between them.

Article XXXIX

(Deleted)

Article XL

The parties may by mutual agreement establish the Tribunal in the manner they deem most appropriate; they may even select a single arbiter, designating in such case a chief of state, an eminent jurist, or any court of justice in which the parties have mutual confidence.

Article XLI

If the procedure set forth in the preceding article is not carried out within two months of the date of the agreement, each party shall name one arbiter of recognized competence in questions of international law and of the highest integrity, and shall transmit the designation to the Permanent Council of the Organization of American States. At the same time each party shall present to the Council a list of ten jurists chosen from among those on the general panel of members of the Permanent Court of Arbitration of The Hague who do not belong to its national group and who are willing to be members of the Arbitral Tribunal.

The Council of the Organization shall, within the month following the presentation of the lists, proceed to establish the Arbitral Tribunal in the following manner:

(a) If the lists presented by the parties contain three names in common, such persons, together with the two directly named by the parties, shall constitute the Arbitral Tribunal;

(b) In case these lists contain more than three names in common, the three arbiters needed to complete the Tribunal shall be selected by lot;

(c) In the circumstances envisaged in the two preceding clauses, the five arbiters designated shall choose one of their number as presiding officer;

(d) If the lists contain only two names in common, such candidates and the two arbiters directly selected by the parties shall by common agreement choose the fifth arbiter, who shall preside over the Tribunal. The choice shall devolve upon a jurist on the aforesaid general panel of the Permanent Court of Arbitration of The Hague who has not been included in the lists drawn up by the parties;

(e) If the lists contain only one name in common, that person shall be a member of the Tribunal, and another name shall be chosen by lot from among the eighteen jurists remaining on the above-mentioned lists. The presiding officer shall be elected in accordance with the procedure established in the preceding clause;

(f) If the lists contain no names in common, one arbiter shall be chosen by lot from each of the lists; and the fifth arbiter, who shall act as presiding officer, shall be chosen in the manner previously indicated;

(g) If the four arbiters cannot agree upon a fifth arbiter within one month after the Council of the Organization has notified them of their appointment, each of them shall separately arrange the list of jurists in the order

of their preference and, after comparison of the lists so formed, the person who first obtains a majority vote shall be declared elected.

Article XLII

When more than two States are involved in the same controversy, the States defending the same interests shall be considered as a single party. If they have opposing interests they shall have the right to increase the number of arbiters so that all parties may have equal representation. The presiding officer shall be selected by the method established in Article XL.

Article XLIII

The parties shall in each case draw up a special agreement clearly defining the specific matter that is the subject of the controversy, the seat of the Tribunal, the rules of procedure to be observed, the period within which the award is to be handed down, and such other conditions as they may agree upon among themselves.

If the special agreement cannot be drawn up within three months of the date of the formation of the Tribunal, it shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the parties, unless the parties instruct the Tribunal to draw up said agreement.

Article XLIV

The parties may be represented before the Arbitral Tribunal by such persons as they may designate.

Article XLV

(Deleted)

Article XLVI

The award shall be accompanied by a supporting opinion, shall be adopted by a majority vote, and shall be published after notification thereof has been given to the parties. The dissenting arbiter or arbiters shall have the right to state the grounds for their dissent.

The award, once it is duly handed down and made known to the parties, shall settle the controversy definitively, shall not be subject to appeal, and shall be carried out immediately.

Article XLVII

Any differences that arise in regard to the interpretation or execution of the award shall be submitted to the decision of the Arbitral Tribunal that rendered the award.

Article XLVIII

Within a year after notification thereof, the award shall be subject to review by the same Tribunal at the request of one of the parties, provided a previously existing fact is discovered unknown to the Tribunal and to the party requesting the review, and provided the Tribunal is of the opinion that such fact might have a decisive influence on the award.

Article XLIX

Every member of the Tribunal shall receive financial remuneration, the amount of which shall be fixed by agreement between the parties. Each Government shall pay its own expenses and an equal share of the common expenses of the Tribunal, including the aforementioned remunerations.

CHAPTER SIX

FULFILLMENT OF DECISIONS

Article L

If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award.

CHAPTER SEVEN

ADVISORY OPINIONS

Article LI

The parties concerned in the solution of a controversy may, by agreement, petition the General Assembly or the Security Council of the United Nations to request an advisory opinion of the International Court of Justice on any juridical question. They may also request one of the Inter-American Juridical Committee.

In both cases, the petition shall be made through the Permanent Council of the Organization of American States.

CHAPTER EIGHT

FINAL PROVISIONS

Article LII

The present Treaty shall be ratified by the High Contracting Parties in accordance with their constitutional procedures. The original instrument shall be deposited in the Pan American Union, which shall transmit an authentic certified copy to each Government for the purpose of ratification. The instruments of ratification shall be deposited in the archives of the Pan American Union, which shall notify the signatory governments of the deposit. Such notification shall be considered as an exchange of ratifications.

Article LIII

This Treaty shall come into effect between the High Contracting Parties in the order in which they deposit their respective ratification.

Article LIV

Any American State which is not a signatory to the present Treaty, or which has made reservations thereto, may adhere to it, or may withdraw its reservations in whole or in part, by transmitting an official instrument to the Pan American Union, which shall notify the other High Contracting Parties in the manner herein established.

Article LV

Should any of the High Contracting Parties make reservations concerning the present Treaty, such reservations shall, with respect to the State that makes them, apply to all signatory States on the basis of reciprocity.

Article LVI

The present Treaty shall remain in force indefinitely, but may be denounced upon one year's notice, at the end of which period it shall cease to be in force with respect to the State denouncing it, but shall continue in force for the remaining signatories. The denunciation shall be addressed to the Pan American Union, which shall transmit it to the other Contracting Parties.

The denunciation shall have no effect with respect to pending procedures initiated prior to the transmission of the particular notification.

Article LVII

The present Treaty shall be registered with the Secretariat of the United Nations through the Pan American Union.

Article LVIII

As this Treaty comes into effect through the successive ratifications of the High Contracting Parties, the following treaties, conventions and protocols shall cease to be in force with respect to such parties:

1. Treaty to Avoid or Prevent Conflicts between the American States, of May 3, 1923;
2. General Convention of Inter-American Conciliation, of January 5, 1929;
3. General Treaty of Inter-American Arbitration and Additional Protocol of Progressive Arbitration, of January 5, 1929;
4. Additional Protocol to the General Convention of Inter-American Conciliation, of December 26, 1933;
5. Anti-War Treaty of Non-Aggression and Conciliation, of October 10, 1933;
6. Convention to Co-ordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States, of December 23, 1936;
7. Inter-American Treaty on Good Offices and Mediation, of December 23, 1936;
8. Treaty on the Prevention of Controversies, of December 23, 1936.

Article LIX

The provisions of the foregoing Article shall not apply to procedures already initiated or agreed upon in accordance with any of the above-mentioned international instruments.

Article LX

The present Treaty shall be called the "PACT OF BOGOTA".

Rio de Janeiro, August 29, 1985.

Inter-American Juridical Committee,
Rio de Janeiro,
Brazil.

EXPLANATION OF THE VOTE OF DR. MANUEL A. VIEIRA

I have voted in favor of the Committee's suggested amendments to the Pact of Bogotá. I wish, however, to make certain comments on them.

First, the limited amount of time the Committee had to study that important subject and the delay with the respective documentation, particularly the comments of the Secretariat, essential to our studies, are factors that should be taken into account. It must also be considered that our Committee has to deal with other topics on our agenda.

With regard to the content of the document approved by the Committee, I would like to address certain points specifically. Although these have been mentioned in the minutes, in my opinion they warrant an explanation at this time.

First, I wish to point to Article V, which I would end with "internal jurisdiction".

Second, in Article VII, on diplomatic protection, I would have preferred an alternative formula, such as the following:

"(A) claims of nationals may be subject to the mechanism of this Treaty:
    (i) in the event of the denial or delay of justice by the respective States;
    (ii) when they have not had access to the respective courts;
(B) claims by nationals shall be governed by international law;
(C) the Contracting Parties shall consider the possibility of establishing appropriate means to settle these disputes and determine the pertinent procedures for dealing with them lawfully."

In Article XII, I proposed eliminating the confidentiality of the procedures, since on several occasions, publicity of certain actions has had some benefit, as in certain cases that have arisen in the United Nations.

Finally, I should note that I opposed inclusion of the Committee in Article LI, which empowers it to issue advisory opinions. This is one of the powers granted to the International Court of Justice, an organ made up of judges, or if you wish, with a specific judiciary function — both judicial and advisory — while the Committee is made up of jurists, its functions are far from being judicial.

Rio de Janeiro, August 29, 1985.

Manuel A. VIEIRA.

Inter-American Juridical Committee,
Rio de Janeiro,
Brazil.

EXPLANATION OF THE VOTE OF DR. LUIS HERRERA MARCANO, FROM VENEZUELA

I have voted in favor of the preceding Opinion because I consider that, on the whole, it makes useful proposals for amendment of the American Treaty on Pacific Settlement (Pact of Bogotá). Nevertheless, I dissent from that document in respect of the articles shown below, in which I have italicized the wording that I propose:

Article II

First paragraph: same as the Committee's wording.
Second paragraph: same as the Committee's wording.
Third paragraph: Consequently, in the event that a controversy arises between two or more signatory States that cannot be settled by direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty, in the manner and under the conditions provided for in the following articles.
Fourth paragraph: same as the Committee's wording.
Fifth paragraph: same as the Committee's wording.

Article V

The present Treaty shall not be applied to matters that, by their nature, are within the domestic jurisdiction of the State. *Upon ratifying this Treaty, or at any time thereafter, each State may declare that it accepts the compulsory jurisdiction of the International Court of Justice to decide whether or not a matter is, by its nature, within the domestic jurisdiction of a State.*

Article VI

The present Treaty shall not apply to matters already settled by arrangement between the parties, or by arbitral award, or by decision of an international court, or which are governed by agreements or treaties in force on the date *of the conclusion* of the present Treaty.

Article VII

Any controversy between the parties that concerns the existence or nonexistence of a case of denial of justice, shall be governed by the provisions of the Inter-American Convention on Human Rights.

Article XIII

(Deleted)

Article XV

First paragraph: same as the wording proposed by the Committee.

Second paragraph: *Upon ratifying the present Treaty or at any time thereafter, each State may declare that it accepts, on the basis of reciprocity, the obligation to submit to conciliation, based on the terms of the present Treaty, any controversy that may arise between it and any other State Party.*

Article XXXI

Upon ratifying the present Treaty or at any time thereafter, each State may declare that it accepts, on the basis of reciprocity, as binding *ipso facto*, the jurisdiction of the Inter-American Court of Justice with respect to any controversy that has been submitted to conciliation under the terms of this Treaty and that has not been resolved, without the need for any special intervention so long as this Treaty remains in effect:

(a) The interpretation of a treaty;
(b) Any question of international law;
(c) The existence of any fact which, if established, would constitute the breach of an international obligation;
(d) The nature or extent of the reparation to be made for the breach of an international obligation.

Article XXXII

Upon ratifying the present Treaty or at any time thereafter, each State Party may declare that it accepts, on the basis of reciprocity, as binding ipso facto, *the jurisdiction of the International Court of Justice without the need for any special intervention so long as this Treaty remains in effect, with respect to any controversy that, having been submitted to conciliation under the terms of this Treaty, has not been resolved.*

Article XXXVIII

Upon ratifying the present Treaty or at any time thereafter, each State Party may declare that it accepts, on the basis of reciprocity, the obligaton to submit to arbitration, in accordance with the following provisions, any controversy to which the present Treaty applies.

Article XLI

To insert, following the phrase "of the date of the agreement", the following text: "*or from the time which a Contracting Party that his previously accepted the obligation to submit a dispute to arbitration infoms the other Party, that has accepted the same obligation, in writing, of its fomal decision to proceed to arbitration*".

Additional Article

Nothing contained in the present Treaty may be interpreted as a limitation on or replacement of the provisions of the American Convention on Human Rights, signed at San José, Costa Rica, in 1969.

The reasons why I differ from the majority opinion on the points indicated were expressed in detail at the Committee's session, and appear in the summary minutes. They may be summarized as follows:

I. The Committee's draft retains acceptance of the compulsory nature of recourse to conciliation and to the International Court of Justice as the only solution. I think that if the purpose of this effort is to obtain widespread ratification by the American States, in so far as possible without reservations, it is not possible to ignore the fact that it is precisely that obligatory character that was the subject of various reservations and the reason why some countries have not ratified the Treaty. For this reason, I consider it very doubtful that the amendment proposed by the Committee will substantially change the unsatisfactory status of the Treaty, which is precisely the reason adduced for the amendment.

In contrast, the Committee's proposal eliminates any possibility that a State Party may accept in a prior and general way the obligation to resort to arbitration, and thus would undermine the system now in effect among many States.

For these reasons, I have proposed a system of optional clauses regarding the obligation to resort to conciliation, the International Court of Justice, and arbitration. The system proposed would make possible:

(a) Ratification without substantial reservations by all the member States of the Organization of American States;

(b) The establishment of a network of acceptances among the parties that would achieve, in each bilateral relationship, the maximum degree of compulsory application that the States are in fact willing to accept at present; and

(c) The prospect that in the future the number of acceptances of that compulsory application would gradually increase, until some day the *desideratum* of the airtight system of pacific settlement that the authors of the Bogotá Pact proposed, with more idealism than realism, may be attained.

In this regard, I consider the Inter-American Court of Human Rights a good example. An optional clause on its jurisdiction has been gaining acceptance by the States Parties to the Pact of Bogotá.

II. I have proposed the deletion of Article VII from the present text because I consider that the institution of diplomatic protection, a source of so many abuses in the past, is completely obsolete in general international law currently, and that it should not be recognized in an inter-American treaty, even if only to limit it. The ostensible justification for this juridical exception, i.e., the protection of a State's nationals when their fundamental rights are violated and they are denied justice by another State, lost its rationale in this hemisphere when the system of the American Convention on Human Rights (Pact of San José) was established, since it provides an effective system for the settlement of any dispute that might arise over such matters.

Rio de Janeiro, August 29, 1985.

Luis HERRERA MARCANO.

Inter-American Juridical Committee,
Rio de Janeiro,
Brazil.

EXPLANATION OF THE VOTE OF DR. ROBERTO MACLEAN UGARTECHE

I would have preferred, as reflected in the Opinion of the Committee and the corresponding minutes, not to include the new second paragraph to Article II that reads: "This provision shall not be interpreted as an impairment of the rights and obligations of the States Parties under Article 52, paragraph 4, of the Charter of the United Nations." I think it would have been wiser to refer simply to Article 52, although I consider the mere inclusion of it unnecessary, because it is redundant and may give rise to interpretations with which I have already expressed my disagreement in the explanation of my dissenting vote in August 1984.

I also think, as indicated in the corresponding minutes and the Opinion approved, that, to be consistent with Article 25 of the Charter of the OAS, the word "arises" should not have been replaced by "exists" or "there is". This latter term is vague and imprecise and could conflict with other articles of the Charter.

I also consider the explanation given regarding Article VI inappropriate and unnecessary. It is merely a comment and does not examine or discuss as it should a matter that already has been examined and discussed in international law, especially in the Vienna Convention on the Law of Treaties. Furthermore, it does not propose any amendment to the article, which in the unanimous view of the members of the Committee, should remain as is.

However, my chief concern, consistent with the Committee's decision adopted at its session in August 1971, and reflected in its discussions and the corresponding minutes, is the viability of the Pact. In my opinion, the approved amendments are cosmetic and stylistic, and without diminishing their importance, I think that most could be avoided by a statement of reservations or by interpretation. The principal impediment to the full functioning of the Pact of Bogotá must be sought by other means, in the political will of the parties. Otherwise, any attempt at logic or style is pointless. The social force and effectiveness of Law does not lie in the grammatical correctness of a text or in the clarity and lucidity of the logical structure of a rule, but rather in the collective political will to accept a set of rules in an ongoing search for peace based on respect for the Law.

Rio de Janeiro, August 29, 1985.

Roberto MacLean Ugarteche.

Inter-American Juridical Committee,
Río de Janeiro,
Brazil.

ANALYSIS OF THE AMERICAN TREATY ON PACIFIC SETTLEMENT ("PACT OF BOGOTA"), TAKING INTO ACCOUNT THE RESERVATIONS MADE BY THE SIGNATORY STATES AS WELL AS THE REASONS SOME STATES MIGHT HAVE FOR NOT RATIFYING IT, IN ORDER TO DETERMINE WHETHER AMENDMENTS NEED TO BE MADE TO THAT INSTRUMENT TO ENSURE ITS VIABILITY

Rapporteur: Dr. Galo Leoro F.

The Inter-American Juridical Committee, at its meeting on August 5, decided to place the study of the Pact of Bogotá, within the guidelines indicated above, as the first topic on its agenda, in order to respond, in so far as possible, to the request made of it in this respect by the Permanent Council of the OAS. All this is part of an undertaking of the highest importance, one that the General Assembly reinstituted through resolution AG/RES.745, adopted in November 1984, at its fourteenth regular session. The Committee also decided to appoint the undersigned as Rapporteur on the topic. In view of what little time the Committee had for meeting the Council's request, it also decided that the Rapporteur would begin and develop his work through oral statements during the meetings, as in fact he did, beginning on August 6. The summary of those statements appears in the corresponding minutes.

Given the special significance of the topic within the vast program of changes in the inter-American system that the Organization has outlined and so as to put the material in more systematic order, the Rapporteur felt that this summary report should be drafted. It brings together the ideas that were expressed at those meetings. Important discussions were held about the various topics under study, which will be an additional and more considerable source of reference for the study of the Pact of Bogotá, with a view to determining its viability and the advisability of amending it.

General Background

At various points in time, the member States of the OAS have sought reforms in the inter-American system.

The system developed within a legal framework established by resolutions passed by the International Conferences of American States. Many of the declarations from those conferences contain principles that point up a constant effort to surmount problems. The most significant reform made in the system was the signing of the Charter of the OAS in 1948 when an organization that had developed over the course of several decades was contractually instituted. That contractual transformation was the climax of an essential undertaking that began with the Inter-American Treaty of Reciprocal Assistance, adopted in Rio de Janeiro in 1947, and culminated with the American Treaty on Pacific Settlement or "Pact of Bogotá" and the other invaluable inter-American instruments that address social rights, human rights, economic relations, all on a substantive and structural scale that was without precedent. After 1945 in order to survive the regional system had to be instituted contractually and adapt itself to the highest international standards of the United Nations Charter.

Here in Rio de Janeiro in 1965, the Second Special Inter-American Conference would begin efforts to redirect the inter-American system toward more ambitious goals for the economic and social development of its American States. It would also adopt resolution XIII to "strengthen the capacity of the Organization to give the member States effective aid in the peaceful settlement of their disputes", giving the Council of the Organization the necessary powers. The Protocol of Buenos Aires, signed in 1967 as a result of the new direction adopted in Rio, brought certain normative and structural changes to the Organization. It makes the Councils equal from the legal standpoint and changes the name of some of the organs. But it does not alter the basic principles. The economic and social standards were enlarged upon, as were those concerning education, science and culture, with the emphasis on development. The Permanent Council was given the same powers as those given to the Inter-American Peace Committee in its 1956 Statutes, in effect at that time.

In 1973, another reform movement would lead to the establishment of CEESI, a special committee charged with studying the inter-American system and proposing amendments to its instruments in order to modernize the Organization and find the means to give it a better internal political balance and to increase the opportunities for co-operation among its members, under the general banner of a Third-World approach and détente in international affairs, evident at that time both on the world scene and on the inter-American scene. CEESI produced a considerable number of volumes. It developed draft amendments to the Charter and to the Rio Treaty and proposed two new draft conventions on co-operation for integral development and collective economic security. The only draft ultimately enacted was the amendment of the Rio Treaty. The Protocol in question was signed in San José, Costa Rica, in 1975, but has not yet entered into force.

The dormant intention to reform the inter-American system resurfaced again at the General Assembly held in Brasilia, the foundation being the work that CEESI had produced. The brief time frame allowed for this major undertaking means that the bodies responsible for this vast project have to prepare their drafts quickly.

There is, therefore, an ever-present concern to adapt and improve the instruments of the OAS to suit increasing political, social and economic needs in the countries of the hemisphere and to be in step with the changing international scene.

The idea of strengthening the Organization at its very foundation also signifies a desire to make it a more effective means of achieving its major objectives, which range from maintenance of peace through collective security and peaceful settlement of disputes, to observance of human rights and inter-American co-operation in all fields.

This effort to renew the system comes at a time when the most serious economic-financial crisis endangers social tranquillity and threatens to paralyse the development of most American countries.

The situation of the Pact of Bogotá has been a source of concern for the Organization since 1954; at that time the International Conference of American States held in Caracas adopted resolution XCIX whereby it ordered the then Council to conduct an inquiry among the member States to "ascertain the suitability of, and the appropriate opportunity for proceeding to revise the American Treaty on Pacific Settlement"; if the results were positive, the Inter-American Council of Jurists and the Inter-American Juridical Committee were to study the possibility of amending the Pact of Bogotá. The outcome would not have favored amendment of the Treaty.

Later, at the first regular session of the General Assembly held in San José, Costa Rica, in 1970, the General Assembly adopted resolution 54 wherein the Inter-American Juridical Committee is requested, based on the provisions of Article 26 of the Charter, to conduct a study of the experience acquired from application of the instruments for peaceful settlement of disputes, in order to strengthen the inter-American system for the maintenance of peace. In its opinion of September 8, 1971, the Committee said that the best means to strengthen the system would be for those States that had not yet ratified the Pact of Bogotá to do so.

The advisability of amending the Pact of Bogotá was raised at CEESI in 1973. Although no position materialized in this respect, CEESI decided that the matter should be examined on some future occasion.

Today the Committee has been entrusted with studying the Pact of Bogotá; the Committee had suggested that very thing in its own opinion of August 21, 1984. The fundamental purpose would be to facilitate a general consideration of the measures that should be taken to modernize the inter-American system overall, with a view to strengthening it and endeavoring, by every means possible, to make inter-American co-operation more effective, in this specific case in the field of peaceful settlement of disputes

The Pact of Bogotá and the Inter-American Treaty of Reciprocal Assistance — Instruments for the Maintenance of Peace

The Pact of Bogotá and the Inter-American Treaty of Reciprocal Assistance are the instrumental means for carrying out the objectives set forth in the Charter with respect to maintenance of the peace. The first is the Organization's response to the need to settle international disputes between its members peacefully; the second is a collective response to aggression and other attempts against the territorial integrity, sovereignty and independence of the member States, under the terms and according to the characteristics that those instruments establish for each one of their respective spheres of action.

The fact that the Charter of the OAS makes reference to those two special treaties, which differ in their nature and sphere of application but are the same in terms of purpose — that being the maintenance of peace —, naturally prompts me to examine how they are applied, which is frequent and wide-ranging in the case of the Rio Treaty, and non-existent in the case of the Pact of Bogotá. The Rio Treaty has been ratified by the vast majority of the member States, while the Pact of Bogotá has been ratified by an obvious minority. While the Rio Treaty was amended by the Protocol of San José, in 1975, the Pact of Bogotá has remained unchanged.

Naturally, the most striking fact of all is that the Pact has never been invoked by its parties to settle their disputes peacefully. If Honduras and Nicaragua resorted to its procedures in 1957, it was only because the Permanent Council, acting provisionally as organ of consultation, had recommended that measure and the two member States took their dispute to the International Court of Justice to resolve the controversy over the 1906 Award.

Thus, there has been no balance between the two fundamental sides of the maintenance of peace within the OAS, those being collective security and peaceful settlement of disputes. In practice, the Organization's main objective with respect to peaceful settlement of disputes has not been served. This may be because resolution has been sought through Article 7 of the Inter-American Treaty of Reciprocal Assistance, which provides the following:

> "In the case of a conflict between two or more American States, without prejudice to the right of self-defense in conformity with Article 51 of the Charter of the United Nations, the High Contracting Parties, meeting in consultation, shall call upon the contending States to suspend hostilities and restore matters to the *status quo ante bellum*, and shall take in addition all other necessary measures to reestablish or maintain inter-American peace and security *and for the solution of the conflict by peaceful means*. The rejection of the pacifying action will be considered in the determination of the aggressor and in the application of the measures which the consultative meeting may agree upon."

Perhaps several instances where the Rio Treaty was invoked can be better explained if one considers that the Organization did not have an organ that, at the request of one of the parties or on its own initiative (as happened with the Inter-American Peace Committee, before it was changed in May 1956), could recommend to the contending States suitable measures or means for finding a solution to their dispute.

Thus, under certain circumstances, the American States have had to invoke the Inter-American Treaty of Reciprocal Assistance, an instrument whose organ acts at the request of one of the parties and, in certain cases, when convoked by the Chairman of the Permanent Council (Article 63 of the Charter). Under Article 7, cited earlier, it is called upon to play an important role in achieving pacification and even to finding a solution to the conflict via peaceful means. Naturally, the best thing for the member States and for the inter-American system would be for the methods of peaceful settlement to be as effective as the Rio Treaty's methods, even more so if possible.

A desire to achieve that parity, or at least some balance in the use of the two means for maintaining peace within the inter-American system, is what doubtless has prompted the member States to try to alter those aspects of the fundamental instruments that, experience has shown, do not function or have not functioned in the past. In the Committee's judgment, the situation noted in the case of the Pact of Bogotá holds true in the case of the OAS Charter, as well, since the task assigned to the Permanent Council and to the Inter-American Committee on Peaceful Settlement, under Articles 82 through 90, is just as difficult since it cannot, at the request of only one of the parties or on its own initiative, lend its good offices to bring the parties together and suggest means for settling disputes between member States. In its opinion of August 21, 1984, the Committee suggested amendments to the Charter to correct that problem.

The Pact of Bogotá

This instrument is provided in Article 26 of the Charter so that it will

> "establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application, so that no dispute between American States shall fail of definitive settlement within a reasonable period".

The Pact of Bogotá was to be a codification of those treaties on peaceful settlement existing within the Inter-American system and listed in Article LVIII thereof. That Article provides that once the Treaty comes into effect, the earlier conventions shall cease to be in force with respect to the parties thereto.

The American Treaty on Peaceful Settlement went beyond just codifying those conventions, as said before; an effort was made to co-ordinate it with the provisions of the United Nations Charter and significant restrictive standards were introduced vis-à-vis its application and others such as the sequence of steps the parties would be compelled to follow if the procedure of conciliation was invoked from the outset.

Thus, the Pact of Bogotá could be described as an Inter-American Treaty for peaceful settlement of disputes that contains restrictive general standards concerning its application; that describes, one by one, the procedures of good offices, mediation, investigation and conciliation, both judicial and arbitral, that are available to the parties; that does not establish the preeminence of any one method over another or any obligation to initiate the procedures; instead, if either of the parties invokes the procedure of "investigation and conciliation" (Article XVI) any party may request the Permanent Council of the Organization of American States to convoke the Commission of Investigation and Conciliation. If the Commission's efforts are unable to produce a solution, this entitles either of the parties, if they have not agreed upon an arbitral procedure, to have recourse to the International Court of Justice. In this case, the Court shall have compulsory jurisdiction, in accordance with Article 36, paragraph 1, of its Statute (Article XXXII). If the Court, which has the right to decide on its own jurisdiction (Article XXXIII), should declare itself without jurisdiction to hear the controversy, for the general reasons mentioned in Articles V, VI and VII of the Treaty, the controversy shall be declared ended (Article XXXIV); but if the Court for any other reason declares itself to be without jurisdiction to hear and adjudge the controversy, the contracting parties are obligated to submit it to arbitration in accordance with the provisions of the pertinent Chapter of the Pact (Article XXXV). In any event, recourse to the International Court of Justice is available to the parties inasmuch as they declare that they recognized the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the Treaty may be in effect, in all disputes of a juridical nature that are specified in the text of the Pact itself (Article XXXI).

This is the system set up under the Pact of Bogotá with respect to the automatic sequence of procedures. When matters reach the point of compulsory arbitration, should one of the parties fail to designate its arbiter and/or fail to present its list of candidates within a period of two months, the other party shall have the right to request the Permanent Council of the Organization to establish the Arbitral Tribunal, in accordance with the manner established in the Pact itself (Article XLV). If, moreover, the parties fail to draw up an agreement clearly defining the specific matter that is the subject of the controversy within three months as of the date the Tribunal is installed, that agreement "shall be drawn up by the International Court of Justice through summary procedure, and shall be binding upon the parties" (Article XLIII).

The latter sequence and the legal possibility that arbitration could be done without one of the States parties to the dispute participating is what has come to be called the automatism of the Treaty and arbitration by default, respectively.

Viability of the Pact

The viability of an instrument depends upon how quickly and effectively it serves the purpose for which it was signed. So long as it is difficult to resort to its procedures, so long as its application depends on a co-ordinated group of political wills and not only on the pressing need that a State may have to seek the peaceful settlement of a dispute under the protection of a specific treaty on the subject, the viability of the instrument will be questionable. And this happens with the Pact of Bogotá, beyond a general impression that it might be better, in the broadness of its standards, to suggest suitable application consistent with the varied nature of the disputes and of the circumstances that may surround them.

The possibility of its invocation: Neither party is legally in a position to invoke the Pact at the time when, in its individual judgment, a controversy can no longer be settled by diplomatic means.

In fact, the second paragraph of Article II establishes that

> "Consequently, in the event that a controversy arises between two or more signatory States which, *in the opinion of the parties*, cannot be settled through direct negotiations through the usual diplomatic channels, the parties bind themselves to use the procedures established in the present Treaty," etc.

That provision prevents any party, after having made a reasonable attempt to reach an agreement through diplomatic means, to resort to the procedures of the Pact, unless it has the consent of the other party or parties. To prevent recourse to the methods of peaceful settlement in this way certainly reduces the viability of the Pact.

That rule is, moreover, at odds with Article 25 of the Charter, which establishes that

> "In the event that a dispute arises between two or more American States which, *in the opinion of one of them*, cannot be settled through the usual diplomatic channels, the parties shall agree on some other peaceful procedure that will enable them to reach a solution."

The proposal by the Inter-American Juridical Committee dated November 18, 1947, contained a version completely in accord with this provision of the Charter; the Pact should also be in agreement with it.

Another factor that also affects the viability of the Pact is the wording of the provisions on a controversy that arises (Article II, second paragraph) or disputes that arise (Article XXXI) among the member States, thus giving them a sense of application for future disputes. This is not an accident that should be overlooked, since the General Treaty of Inter-American Arbitration and the General Convention of Inter-American Conciliation (1929), each in its Article I, both indicate that they apply to controversies "that have arisen or may arise" among States parties.

If the Pact, in speaking only of the disputes that arise, did not depart from the texts of the conventions that it was to codify so as to restrict application of its provisions, that departure from the texts of the other conventions in question would not make sense. It is strange, however, that the Pact on Arbitration (Article XXXVIII) states that it applies to controversies of any nature "that have arisen or may arise in the future" among the parties.

In a general way, then, the Pact should refer to the existing disputes among the member States. This argument was accepted by CEESI and by the Permanent Council, to the extent that they proposed draft amendments to the Charter that reflect the principle that peaceful settlement is a commitment of the States vis-à-vis existing disputes.

This principle has been adopted by Working Group "A" of the Committee on Juridical and Political Affairs of the Permanent Council, which is in charge of the review of those principles and standards of the Charter, as part of the present undertaking for which that Council is responsible under resolution AG/Res.745, adopted by the General Assembly of the OAS at its session in Brasilia. The text recommended by that Group would be worded as follows:

> "International disputes between member States should be submitted to the peaceful procedures set forth in this Charter. Nevertheless, any member State has the right to resort, in the first place or at any time, to the Security Council or to the General Assembly of the United Nations, in accordance with the provisions of Articles 34, 35, and 52 of the Charter of the United Nations."

The text transcribed above, as may be seen, places the situation of the member States of the OAS in relation to the United Nations in its true perspective and differs, therefore, from the first paragraph of Article II of the Pact, which reads as follows: "The High Contracting Parties *recognize the obligation to settle international controversies* by regional pacific procedures before referring them to the Security Council of the United Nations."

It is evident that if controversies must necessarily be *settled* within the proceedings of the regional agency, nothing would remain of them that should be referred to the United Nations.

Because of lack of agreement with the provisions of paragraph 4 of Article 52 of the United Nations Charter, a similar difficulty is found in the present text of Article 2 of the Inter-American Treaty of Reciprocal Assistance. It has already been amended in the Protocol of Amendment to the Rio Treaty, San José, 1975, precisely in order to reconcile it with the provisions of that Charter, with the following text:

> "*Article 2:* As a consequence of the principle set forth in the preceding article, the High Contracting Parties undertake to settle their disputes with one another by peaceful means.
>
> The High Contracting Parties shall make every effort to achieve the peaceful settlement of their disputes through the procedures and mechanisms provided for in the inter-American system before submitting them to the Security Council of the United Nations.
>
> This provision shall not be interpreted as an impairment of the rights and obligations of the States Parties under Articles 34 and 35 of the Charter of the United Nations."

For revision of Article II of the Pact, the above text could well be followed; even better, the article could make express reference to Article 52, paragraph 4, of the Charter of the United Nations, which is the one that recognizes the complete right of the States belonging to regional arrangements to resort, at any time, to the Security Council, in accordance with the provisions of Articles 34 and 35, despite the recommendation to the States to make every effort to achieve peaceful settlement of disputes through the regional arrangements, when they belong to them.

The automatic operation of the Pact

We could not fail to point out here, in relation to the viability of the Pact, the fact that this instrument has the so-called automatic operation of its procedures and arbitration by default. From one point of view, this means that a sequence of procedures are available, procedures that become practically obligatory for the High Contracting Parties when conciliation fails and the way is thus opened for any of the parties to have the right to resort to the International Court of Justice. Under certain conditions, the Court may have to declare itself to be without jurisdiction. This may lead to arbitration, in which the membership of the Tribunal and even the drafting of the agreement would be automatic.

The problem this automatic operation creates is that the parties may feel obliged to subject a dispute to methods or procedures that, perhaps, may not be the most appropriate ones. A relatively minor dispute, suitable for settlement through conciliation done by much simpler means than those provided for in the Pact, could end up before the Court. All this might involve remedies and standards that might not be the most suitable for that particular dispute. And if the Court should declare itself to be without jurisdiction, on grounds other than those given in Articles V, VI and VII of the Pact, the dispute would finally fall into arbitration.

All this is theoretically possible. In practice, it would not be out of place to suppose that this system is one of the reasons why the Pact has not been ratified by other member States of the OAS. And the most serious thing about this matter is that even conciliation that does not resort to the provisions for this procedure in the Pact, if it fails, will open the obligatory sequence of that instrument.

The Rapporteur feels that one possible way to make the Pact more viable would be a revision intended to offer the States Parties the option of accepting that obligatory method, making allowance for arbitration by default; or one that, when conciliation ends without reaching a settlement of the dispute, would not make the States Parties see themselves impelled, by that fact, toward that automatic operation.

The reservations that have been made to the American Treaty on Pacific Settlement have the effect of removing some of the States Parties from that sequence, at various moments, and affecting it in such a way that it would be suspended upon reaching the Court and preventing it from deciding whether it has jurisdiction, attributing that power to the State making the reservation, or upon refusal to accept arbitration in which one of the parties does not participate.

If, for the same reason, this singular characteristic of the Pact could be maintained as an option for the States, in a manner that would not keep them away from conciliation in view of the condition legally established in the treaty that, if that remedy fails, would lead them to the two judicial procedures, perhaps that would help to make the Pact viable without affecting the positions of the States that have ratified it without reservation, even though they have never resorted to its procedures.

This last circumstance leads us to the most disturbing question: Why have the States Parties not made use of the Pact? What is happening with such an important treaty, one that up to now is no more than a juridical curiosity of the system and not the vital instrument actively working for the peaceful settlement of disputes between the member States, as might have been hoped? Because the Treaty has simply never been applied, we could well say that the safeguards and restriction vis-à-vis its application, as they appear in some provisions of Chapter I, turn out to be elements that, when they should have limited the cases of application, in the end have not been able to contribute anything, because the treaty as a whole has not been applied. The truth is that the parties act as if the Pact were an instrument foreign or unsuitable to them.

The lack of viability of the Pact because of its lack of application is well known in the inter-American system. It is true that the treaty lacks an organ to which the parties could resort to help them in deciding on the one procedure best suited to the dispute presented. It is also true that this gap continues to be felt in the Charter of the OAS, upon not giving the Permanent Council or the Inter-American Committee on Peaceful Settlement the legal means to bring the parties together and provide its good offices, which could mean a recommendation as to which procedure provided for in the Pact (for the parties) should be used if those good offices should prove to be insufficient. In the end, the problem with the general viability of the system of peaceful settlement is also shown by the fact that the inter-American system does not have an organ that could act as the Inter-American Peace Committee so successfully did on so many occasions when the member States of the OAS were involved in disputes.

The Rapporteur must go on record to say that in its Opinion of August 21, 1984, the Committee has already recommended amending Article 84 and those following it, of the Charter. The problems are, in fact, interrelated and cannot be looked at in isolation, the ones apart from the others. That interrelationship is so clear that the Rio Treaty, and not the Charter or the Pact of Bogotá, has been the instrument to which the member States of the OAS have had to resort, as the only possible recourse for peacemaking, in the full sense of the word, as has been said before. Only that instrument may be invoked unilaterally, something not allowed in the specific case where the Permanent Council might offer its good offices in the same manner foreseen in the Charter, for which the consent of the parties involved in the dispute is now required. Since the Rio Treaty must act when acts of aggression or others foreseen in that instrument occur, its pacification mechanism is triggered when collective security has been affected, although Article 7 provides for the search for peaceful solutions, as has happened.

Aspects restricting the application of the Pact

The American Treaty on Pacific Settlement, unlike other instruments that deal with the same subject, such as the European Convention for the Pacific Settlement of Disputes, Strasbourg, 1957, or the Revised General Act for the Pacific Settlement of Disputes, of the United Nations, April 28, 1949, or the proposals prepared by the Inter-American Juridical Committee, contains some provisions in Chapter I that restrict its application and concern diverse subjects.

Thus Article IV constitutes a measure suspending action, since it provides that, once any pacific procedure has been initiated, in accordance with the Treaty, or a previous pact, or by agreement between the parties, "no other procedure may be commenced until that procedure is concluded".

The provision thereby averts a possible build-up of pacific procedures which is entirely reasonable.

Article V states that the pacific procedures may not be applied to matters that, by their nature, are within the domestic jurisdiction of the State. It adds that

> "If the parties are not in agreement as to whether the controversy concerns a matter of domestic jurisdiction, this preliminary question shall be submitted to decision by the International Court of Justice, at the request of any of the parties."

This article mirrors Article 2, paragraph 7, of the United Nations Charter. That paragraph has been criticized for not stipulating which matters are the domestic jurisdiction of the State. Those matters were specified in Article 15, paragraph 8, of the Pact of the League of Nations, which said that international law would determine whether a matter was one of domestic jurisdiction.

The text of Article V makes no reference to international law either. However, should there be any disagreement on the matter, any of the parties can go to the International Court of Justice to have this preliminary question resolved. To decide the question, the Court will obviously apply international law in the manner established in its Statute. The problem, of course, is that there have been reservations to this article concerning the jurisdiction that the Court would otherwise have to decide problems of this type.

Article VI states the following:

> "The aforesaid procedures, furthermore, may not be applied to matters already settled by arrangement between the parties, or by arbitral award or by decision of an international court, or which are governed by agreements or treaties in force on the date of the conclusion of the present Treaty."

This article embodies the principle of observance of treaties *(pacta sunt ser-*

vanda) and the principle of *res judicata*, both being equally valid and recognized principles.

Had there been any questions resolved in the manner prescribed by the Treaty, these would obviously be questions where a procedure of peaceful settlement neither is nor would be in order.

It should be pointed out that under international law, as embodied in instruments such as the Vienna Convention on the Law of Treaties, when circumstances such as those described under Chapter V of that Convention obtain, the road is open for legitimate actions on the part of the State vis-à-vis a treaty's being null or valid. This is something entirely different from the content of Article VI of the Pact, which we will discuss.

Indeed, a treaty neither resolves nor can it resolve questions concerning its own validity. These questions would have to be settled, but never by the treaties themselves. Therefore, they are not embraced by the principle of *pacta sunt servanda* and are not covered under that provision of the Pact of Bogota.

Article VII states that

> "The High Contracting Parties bind themselves not to make diplomatic representations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts of the respective State."

This provision is a legitimate reaction on the part of the American States repre- particularly the Latin American States, to the indiscriminate diplomatic sentations to which they have been subjected, even by means of the use of force when those claims have not been settled in a manner satisfactory to the State making the claim.

At this point in the development of law in this hemisphere, it seems that a provision as clear as Article 15 of the Charter of the OAS would more than suffice. That article provides that "The jurisdiction of States within the limits of their national territory is exercised equally over all the inhabitants, whether nationals or aliens". Why would an alien who is subject to the juris- diction of the State in which he is located, have to claim privileges? Article VII of the Pact is an attempt to prevent such claims from succeeding. There have been situations where the ultimate recourse was not the national judge; instead the State claiming the injustice of a sentence or a delay in the settlement of a case brought before the courts of a country or similar claims has tried to make itself the ultimate recourse, by creating some additional instance. The first reactions against situations of this kind were the Calvo Clause and the Drago Doctrine. Article VII leaves room for diplomatic representa- tions if nationals of some other country have not been afforded the means to place their case before the competent domestic courts of the respective State. The article presupposes that there may still be a State or States in this hemis- phere that might not allow a given alien access to its courts. The hypothesis would be at odds with the constitutions and this would have to be regarded as a potential *de facto* situation that could occur.

The way the article makes reference to the problem is interesting. In effect it provides that the parties bind themselves not to make diplomatic represen- tations in order to protect their nationals, or to refer a controversy to a court of international jurisdiction for that purpose, when the said nationals have had available the means to place their case before competent domestic courts. There are two possible courses of action that the parties could use to protect their nationals: Diplomatic representation, which would be done directly by the claimant State to the State being claimed, and recourse to a "court of international jurisdiction", which in this particular case would be understood to be recourse to the International Court of Justice. The second of these actions would require that both parties have signed the Pact without any reservation to Article XXXI and that the issue in question be juridical in nature. Recourse to an arbitral tribunal (although jurisdictional) would not be easy, since the consent of the party with whom the representation is being made would be required.

Ultimately such matters are procedural in nature. The interesting point is that if nationals have had "available the means to place their case before competent domestic courts" this one circumstance would suffice to allege that justice has been denied.

The procedures under the Pact

We will not attempt any study of the methods of the Pact. The General Secretariat has presented a document (OEA/Ser.G/CP/doc.1560/85 (Part III)), of April 9, 1985, for the purposes set forth in General Assembly resolution AG/Res.745 (XIV-0/84). That document was based on two other documents that the Juridical Committee had occasion to review at its January 1985 session. That document details those procedures, although the Rapporteur is unable to concur with some of the arguments that the General Secretariat makes in this regard and that were explained at some of the Committee's meetings.

We will, therefore, take an overall look at the situation of the procedures established in the Pact:

The Obligatory Element: The Pact has no obligatory procedures. In other words, in the event of a controversy, the States Parties have not undertaken any obligation to resort to any of the procedures in particular, except in the case of the difficult compulsory arbitration triggered by the automatic procedure in the Pact (Article XXXV), as will be seen further on.

The Pact has had to make allowance for a situation whereby if a State Party wishes to invoke a given procedure (without its being that State's obligation to do so), it may do so. If the controversy in question is of a juridical nature, it does this by recourse to the International Court of Justice, in which case jurisdiction is compulsory *ipso facto* for the parties (Article XXXI). If the controversy is of any other nature, the State may invoke the Pact by means of recourse to conciliation, in which case it has the right to request that the Permanent Council convoke the Commission of Investigation and Conciliation to obtain from this body certain recommendations to the effect that the parties avoid acts that may impair the conciliation. But the Council cannot form that Commission if one of the parties fails to appoint two of the members (Articles XVII and XIX).

In any event, there is no clause in the American Treaty on Pacific Settlement that binds the States Parties, in the event of a controversy, to submit said controversy to a given procedure. An obligation of that kind does exist, for example, in the European Convention for the Pacific Settlement of Disputes, Strasbourg, April 29, 1957. Under Article 1 of this Convention, the High Contracting Parties are obliged to submit to the International Court of Justice any controversy of a juridical nature that is related to the situations listed in the Statute of the Court, Article 36.2. By the same token, under Article 4, the parties shall submit to conciliation any controversy that may arise between them and that is not covered under Article 1.

Let us clarify this point: By not making it binding upon the Parties to resort to any given procedure, the Pact provides an option whereby if one of them wishes to use conciliation, that party may unilaterally request of the Permanent Council, the organ that is empowered to convoke the Commission of Investigation and Conciliation (Article XVI), that it do so. However, with this procedure, the installation of that Commission is still contingent upon whether the States Parties have first appointed the two members of the Commission, by a simple exchange of notes (Article XVII) or, if not, after compiling the names, by appointing them at the start of the conciliation procedure, in accordance with Article XIX. The Pact does not address the possibility that a State might refuse to appoint its members on the Commission. Nonetheless, it is clear that the Permanent Council does not have the power to make that appointment by default, as happens when the Arbitral Tribunal is constituted (Article XLV).

The other option the Pact provides is that if a party decides to go to the International Court of Justice (without this being its obligation) to settle any controversy of a legal nature, it will then have the compulsory jurisdiction, *ipso facto*, of that Court in respect of the other party (Article XXXI).

Naturally everything said here is a function of the text of the Pact, reservations notwithstanding.

This direct recourse to the International Court of Justice, which comes about when a party voluntarily brings the matter to that court of international jurisdiction, is entirely different from the recourse that a party has by law as a result of the automatic element of the Pact. In the latter case, jurisdiction is not based on Article XXXI, but rather Article XXXII, which provides that if conciliation leads to no solution, either party *shall be entitled* to have recourse to the International Court of Justice, which shall have compulsory jurisdiction in accordance with Article 36, paragraph 1, of its Statute.

If a controversy that might be described as not being juridical in nature, is initially submitted to the conciliation procedure, and if that procedure fails and the parties fail to agree to submit it to a procedure of arbitration, either of the parties (again, if it so desires) may take the controversy to the Court. Once its jurisdiction is established in accordance with Article 36.1 of its Statute, the Court then has general jurisdiction, not confined to controversies of a juridical nature. Paragraph 1 of that article states that: "The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." In the Pact of Bogotá, provision has been made for the fact that the Court has: *(a)* compulsory jurisdiction for the controversies of a juridical nature as listed in Article XXXI, which it recognizes; and *(b)* compulsory jurisdiction for any controversy that comes to it as a result of unsuccessful conciliation (conciliation of any type of controversy) and for which the parties have not agreed upon an arbitral procedure, based on Article XXXII. Only the Court's general jurisdiction recognized in Article XXXII triggers the automatic element of the Pact; otherwise, its jurisdiction would have been confined to controversies of a juridical nature, which would be at odds with the purpose of that automatic procedure and with the Pact's clear-cut recognition of the Court's dual jurisdiction in the case of controversies of a juridical nature and all controversies in general.

Article 36.1 of the Statute is very clear on the point that the Court has jurisdiction in respect of *any matter* that the parties may bring to it or that is included under treaties. The General Secretariat (p. 19 of document OEA/Ser.G/CP/doc.1560/85 (Part III) of April 1985) is of the view that the Court would only have jurisdiction in the case of juridical controversy; on this point it incorrectly cites paragraph 2 of Article 36 of the Court's Statute, when the Pact of Bogotá, in Article XXXII, makes specific reference to Article 36.1 of the Statute, which means the Court has general jurisdiction for any controversy and not just in respect of controversies of a juridical nature, according to paragraph 2 of Article 36 of the Statute. This is why the Rapporteur has dwelled so much on this point, in order to make his position very clear.

That the Court, according to the Pact, has jurisdiction to hear controversies of a juridical and political nature is also in evidence in the reply received from the Government of the United States to a survey that the Council of the Organization conducted between June 16, 1954, and February 4, 1957, concerning the advisability of amending the Pact of Bogotá. Briefly, the United States position, which favored amendment of the Pact of Bogotá, states that the major defects of the Pact are: *(a)* the requirement that political as well as juridical differences be resolved by means of judicial procedures, such as the provision on compulsory arbitration; and *(b)* abandonment of the principles of international law concerning diplomatic protection. The complete text of the note in question appears in "Acts and Documents of the Second Special Inter-American Conference, Rio de Janeiro, Brazil, 1965", Volume IV, pages 18-22, document 5.

From the foregoing, we can say that the Pact of Bogotá provides a system of procedures whereby once a controversy is submitted to conciliation, following the sequence established in Article XXXII, if the parties do not then agree to arbitration, either of them may bring the controversy to the International Court of Justice for settlement.

If the parties do not agree as to whether the Court has jurisdiction, the Court itself shall first decide that question (Article XXXIII). Any reservation to this article will prevent the Court from participating and discontinue the automatic working of the Pact since the Court would be deprived of two important options: (1) to declare itself without jurisdiction to hear the controversy for the reasons set out in Articles V, VI or VII of the Treaty, in which event the controversy shall be declared ended (Article XXXIV); and (2) to declare itself to be without jurisdiction on any other grounds, in which event the parties shall be obligated to submit the controversy to arbitration (Article XXXV).

One point that should be noted is that, since Articles V, VI and VII constitute general exceptions to the application of the Treaty's procedures, it is very unusual that the parties in a controversy would not have noticed any of those important impediments by the time they submit the controversy to conciliation and only then, when they appear before the Court, would the Court itself use the impediments to declare itself to be without jurisdiction, meaning that such a controversy would not have been the subject of some peaceful settlement. It is odd that none of the States would have recognized this situation, but we realize that this is possible.

Furthermore, determining when the Court may declare itself to be without jurisdiction for reasons other than those of Articles V, VI or VII (the Pact says . . . VI and VII as if it were dealing with an accumulation of reasons) continues to pose problems. We rule out that the Court can declare itself to be without the jurisdiction because the controversy that it has taken up as a result of failed conciliation could have been juridical in nature. On this point, the Pact does not confine the Court's binding jurisdiction to juridical controversies. To the contrary, in the first hearing of a controversy of any nature following a conciliation that was unable to resolve it, the controversy is submitted to the Court independently of that condition, especially because in the

Court's own Statute. Article 36.1 recognizes that this jurisdiction covers all cases that parties submit to it and all matters specifically provided for in the United Nations Charter or in treaties and conventions in force. Obviously, a treaty may then recognize that general jurisdiction and such is the case with the provisions of Article XXXII of the Pact.

We should note that for Article XXXV to apply, the Court must declare itself *to be without jurisdiction* for some other reason and not simply *refrain* from hearing the dispute, the premise being that once the Court's non-jurisdiction has been declared, the High Contracting Parties are *obligated* to submit the controversy to arbitration.

It appears that in the situation posed by Article XXXIV, the only alternative left — and this is increasingly more difficult to come about — would be for the Court to be able to declare itself to be without jurisdiction on the grounds that there is no applicable law, that is, a case of *non liquet*.

The one certain point is that only through this complex and extremely difficult process can *compulsory* arbitration be reached (Article XXXV). The Pact is silent here, unlike its dealings with other procedures, for example, the procedure under Article XXXII, in which any *party would be entitled* to have recourse to arbitration. By arriving at this point provided for in the Pact, the parties "*are obligated*" to the arbitration. There are reservations made with respect to this aspect of the Pact, thereby making more unlikely its possible practical use in this sense. We know, also, that the Pact has virtually never been invoked by its parties in cases of controversies.

It is interesting to note that the Pact itself has strong doubts that the parties, even though they might not have formulated a reservation to this aspect of the instrument, will avail themselves of that obligatory arbitration. The doubt that the Pact asserts is reflected in its provisions on obligatory establishment, even in default by one of the parties, of the Arbitral Tribunal (Article XLVIII) which, under this premise, is to be established by the Permanent Council. It is also reflected in the formulation of a binding *special agreement*. Even following default, when one of the parties does not agree to the special agreement that defines the specific matter that is the subject of the controversy, the seat of the Tribunal, the rules of procedure to be observed, etc., the agreement shall be drawn up by the International Court of Justice and shall be binding upon the parties (Article XLIII).

We now reach the most difficult part of the Pact, Arbitration in Default. Let us see what happens: If the parties voluntarily agree to submit to arbitration differences of any kind, whether juridical or not (Article XXXVIII), or if the parties go to arbitration through the obligatory route (Article XXXV), the result would still be the same in the sense that if one of the parties does not follow through on designating members of the Tribunal, the Tribunal can be established by the Permanent Council because the Pact does not make any distinction between the two ways in which the parties can submit to arbitration. The same is true with respect to the special agreement since, once arbitration is accepted and if the special agreement is not concluded, the parties cannot prevent the agreement from being formulated obligatorily by the Court.

To the foregoing should be added the unusual circumstances that arise in the event of binding arbitration (Article XXXV), for which the Court itself, after having declared itself to be without jurisdiction in the controversy (Article XXXIV), has to formulate the special agreement that is binding on the parties (Article XLIII). Thus, the Court that has declared itself to be without jurisdiction is obligated to assume jurisdiction at least for this matter, the most delicate part of an arbitration, of drawing up the special agreement. The fitness of such a procedure is a point that deserves the Committee's consideration.

And, will there be eminent persons who wish to be part of a Tribunal that is acting by default? Who knows?

Also, will a court that has declared itself to be without jurisdiction over a controversy be inhibited when it is required to formulate a special agreement concerning the very controversy for which it declared itself to be without jurisdiction? Are these viable procedures for the Pact?

And if the court has declared itself without jurisdiction due to a lack of applicable law, could the Arbitral Tribunal formed to hear the same controversy be expected to find that applicable law or does this mean that the Tribunal might rule on the basis of equity or, if not, be unable to settle the case because there is no applicable law? Also, the idea that the Tribunal might rule on the basis of equity under such a difficult circumstance is not so unorthodox in the light of the Pact itself since neither Article XXXVIII of the Pact, which begins Chapter Five on the Procedure of Arbitration, nor any other article defines whether the Tribunal will issue the ruling in "application of the principles of law", as, for example, Article I of the "General Treaty on Inter-American Arbitration" establishes, or how this will be done?

Does the fact that the Pact is silent on this matter mean that the ruling can be oriented by the judgment of the Tribunal? Or is there something missing in the Pact? This is another ambiguity of this instrument.

These aspects, in fact, give some idea of the great difficulties the States Parties would face if they had to turn to the Pact for conciliation and thus fall under its automatic procedures. Therefore, the Committee has to consider this type of problem and to give its opinion about it. The viability of the Pact rests heavily on all these problems.

The *Good Offices* procedure (Articles IX and X) turns out to be a procedure that the parties should accept. The Pact is not explicit on this matter. This procedure normally comes about when there are "offers" of good offices to the parties in a controversy and the parties accept them. The nature of the procedure appears to indicate this.

Mediation is a method by which the parties choose the mediators by mutual agreement (Article XI).

Neither of these two methods can lead by action or right of one of the parties to another procedure, as occurs when conciliation fails, as seen before.

These, then, are closed procedures, not linked in sequence to another procedure.

Direct recourse to the International Court of Justice if one of the parties resolves to submit to its jurisdiction a controversy of a juridical nature, even if such jurisdiction proves to be binding on the other party (Article XXXI), does not necessarily lead to continuation in another if it fails. We should say the same about Arbitration, when agreed to by the parties (Article XXXVIII).

The foregoing notwithstanding, if the parties agree on mediation and encounter difficulties in choosing the mediators or fail to choose them within five months after the procedure has been started, the parties shall have recourse without delay to any one of the other procedures on peaceful settlement established in the Pact (Article XIII). This is a duty but not an obligation. In any event, the sense of general commitment of Article II of the Treaty would infer that the parties ought to have recourse to another procedure when any procedure to which they may already have had recourse fails. This does not mean that they may not go to the General Assembly or to the Security Council of the United Nations, as Article 52, paragraph 4, of the San

Francisco Charter provides, or as has been definitively clarified in the Protocol of Amendments to the Inter-American Treaty of Reciprocal Assistance, San José, 1975, Article II of which now leaves no doubt that the member States of the inter-American regional arrangement do have this right.

Reservations to the Pact

The reservations to the Pact affect Article V (Peru), VI (Bolivia and Ecuador), VII (Argentina and the United States) and XXXI to XXXVII (Argentina). From the contents of the reservation formulated by the United States, one concludes that it would affect Articles XXXI, XXXII, XXXIII and XXXV. Peru's reservations affect Articles XXXIII, XXXIV and XXXV. One should understand that Paraguay makes a partial reservation to Articles XXXV, XLIII and XLV to the extent that the binding arbitration might apply to non-juridical controversies. Also, the reservation of Peru affects Article XLV and the reservation of Chile, Article LV.

The reservation of Nicaragua to the effect that no provision of the Treaty

> "may prejudice any position assumed by the Government of Nicaragua with respect to arbitral decisions the validity of which it has contested on the basis of the principles of international law, which clearly permit arbitral decisions to be attacked when they are adjudged to be null or invalidated",

would not have any effect now on the Pact since the situation to which it referred was the subject of a specific settlement several years ago.

In all, reservations were made to thirteen articles. Some of these, as noted above, are objected to by two or three States.

Of the States that formulated reservations when they signed the Pact, Argentina, Bolivia, Ecuador and the United States have not ratified it.

One point that deserves special mention is that most of the reservations concern non-acceptance of the Court's competence to decide on its own jurisdiction and non-acceptance of binding arbitration and arbitration in default. These all, in turn, detract from the automatic working of the Pact since reservations such as these interrupt the sequence of events and thereby suspend it once the conciliation fails or any of the parties invokes its reservation to prevent the Court from entering the case.

The provisions that establish general exceptions in Chapter I, which correspond to Articles V, VI and VII, have also been the subject of reservations. One of them, the provision contained in Article VII, is the subject of contradictory reasons invoked by the two States that formulated reservations concerning it.

Ecuador's reservation to Article VI is not accompanied by an explanation of the reasons for it. Also, its reservations to every position that is in conflict with or not in harmony with the proclaimed principles or the stipulations contained in the United Nations Charter, or the OAS Charter, can be considered to constitute reservations to Article II, paragraphs 1 and 2, of the Pact. They would be reservations to paragraph 1 because it is at odds with the provisions of the San Francisco Charter which we have seen in a general way earlier on, and to the second of these, because it is inconsistent with Article 25 of the OAS Charter. In effect, while paragraph 2 of Article II requires concurring opinions of the parties in the sense that before any of the Pact's procedures can be invoked, all should agree that their direct negotiations did not produce results, Article 25 of the Charter provides that only one of the parties has to be of such opinion so that recourse to the Pact can be had, which is as it should be. The reservation concerning lack of harmony between the provisions of the Pact and the constitution would have to be examined in a comparative study.

Bolivia's reservation to Article VI is self-explanatory.

Since the reservations, pursuant to Article LV, must apply to all the States parties because of reciprocity, those that have been formulated suggest the elimination of important provisions in respect of all the parties.

El Salvador, which was a party to the Pact, denounced it on November 26, 1973.

Lack of ratification by other States

No other State has ratified the Pact since Chile did in 1974. This means that only slightly more than one-third of the OAS member States are parties to the American Treaty on Pacific Settlement.

There was not sufficient time to conduct certain inquiries to in some way shed light on the basic reasons why the great majority of OAS member States did not ratify the Pact.

In view of the circumstances, the Rapporteur wished to point out aspects of a technical nature that make application of the Pact difficult, as well as aspects that involve or could involve political difficulties for its acceptance by other States and are related to the automatic working of the Treaty and the binding jurisdiction provided for the International Court of Justice, particularly where the Pact gives the Court the jurisdiction to hear any type of controversy that could be brought before it when conciliation has failed to solve it. Another aspect, more political than juridical in nature, is retaining the reference to diplomatic protection in the Pact, even if it is as the Pact now has it.

Perhaps the Pact has stumbled over its own complexity into juridical technicalities that are difficult to solve and into serious problems with actual application.

Conclusions

At the end of this presentation, the Rapporteur cannot help but conclude that the Pact has a number of technical problems and contains difficult juridical policy that could be amended with a view toward its effective application and for the purpose of having, to the extent possible, the majority of the member States of the OAS become parties to it, as they are to the Rio Treaty.

Changing these aspects presupposes amending the instrument. At times it has been proposed that the Organization develop for itself a similar treaty (Brazil, the United States and Ecuador made proposals of this nature in 1965) that is more simple, and leaves out the general exceptions to its application and the sequence of procedures that the Pact now contains since to this time the Pact has not been invoked directly by its parties even though there have been controversies between them.

Also clearly missing is an organ that could bring the parties together, offer them their good offices and assist them in choosing some method from the Pact of Bogota itself. In its opinion of August 21, 1984, the Inter-American Juridical Committee suggested that powers such as these be given to the Permanent Council. This could be done by amending Articles 84 *et seq.* of the OAS Charter, which concern the so-called good offices. The Council is not able to do this now unless it has the consent of all the parties. This organ also lacks the ability to act on its own initiative or at the request of only one party.

This possibility of reinstating the powers that the former Inter-American Peace Committee had before its Statute was amended in May 1956 would be very helpful, with or without an amended Pact of Bogotá; but in fact, both things should be done. The Secretary General's study, mentioned above, contains a very enlightening report on the work done by the Inter-American Peace Committee and also leans toward giving the Permanent Council that Committee's former functions in the future.

The principles of peaceful settlement

Before speaking about possible amendment of the American Treaty on Pacific Settlement, perhaps it would be well to formulate some opinion of what a treaty of this type should be and what it represents so that it has, if not full viability, the greatest possible viability.

First of all, let us turn to the principles of peaceful settlement of disputes. Through the Charter, the Rio Treaty and the Pact of Bogotá itself, the Organization has proscribed the use of threat or use of force, it allows force only in the exercise of the inherent right to self-defense and in the cases provided for specifically in the United Nations Charter. The inevitable consequence of this proscription is to have recourse to peaceful settlement procedures in the event of a controversy between States.

Article 2 of the OAS Charter states that one of the essential purposes of the Organization is: "*(b)* to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the member States". Article 3 *(g)* states, "Controversies of an international character arising between two or more American States shall be settled by peaceful procedures".

Article 25 is clear in maintaining as a standard that,

> "In the event that a dispute arises between two or more American States which, in the opinion of one of them, cannot be settled through the usual diplomatic channels, the parties shall agree on some other peaceful procedure that will enable them to reach a solution."

And Article 26 says

> "A special treaty will establish adequate procedures for the pacific settlement of disputes and will determine the appropriate means for their application, so that no dispute between American States shall fail of definitive settlement within a reasonable period."

The reform work done by CEESI and by the Permanent Council in 1977, and the work now being done (see the document on Chapter V of the Charter, prepared in late July 1985 by Group A of the Committee on Juridical and Political Affairs) has all been geared to have the articles quoted above establish clearly that the parties shall have recourse to peaceful settlement of their controversies, not only new ones but also existing controversies between member States.

And, in terms of principles, we must not fail to recall Article 1.1 of the United Nations Charter which states that one of its purposes is:

> "To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or

> other breaches of the peace; *and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.*"

Furthermore, the same Charter states in Article 2.3, "All members *shall settle their international disputes by peaceful means* in such a manner that international peace and security, and justice are not endangered."

And, since the OAS is a regional organ, Article 52 of the Charter is a fundamental norm for governing its relations with the United Nations in the field of collective security and peaceful settlement of disputes. This standard should be observed in the sense of guaranteeing that, although the member States of a regional arrangement should make all possible efforts to achieve peaceful settlement of local controversies through regional agreements before submitting them to the Security Council, Article 52 in no way impairs application of Articles 34 and 35 of the United Nations Charter. Therefore, the member States of the OAS shall always be entitled to have recourse to the Security Council or to the General Assembly whenever they consider it necessary.

It is appropriate and important to note that Article 52.3 of the United Nations Charter states

> "The Security Council shall encourage the development of pacific settlement of local disputes through regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Security Council."

This provision means that a regional arrangement should have adequate rules and mechanisms to respond to efforts toward pacific settlement of a local controversy that may be referred to it by the Security Council. The OAS, under this assumption, should have the means to proceed, either upon instructions or its own initiative, to undertake such a mandate. But the OAS, we repeat, does not have an organ that can, by itself, take up the pacific settlement of that controversy on its own initiative or under the terms of any instructions it may receive. If the Permanent Council were given such a mandate and if any of the parties did not accept the Council and its offers of good offices for this purpose, there would be nothing it could do to carry out the mandate. This aspect is of greatest consequence in terms of allowing the Security Council to carry out this mandate. The legal inability of a regional organ to carry out the objectives of Article 52.3 of the United Nations Charter could imply serious problems of incompatibility with that Charter, which is the highest legal instrument.

How an amended Pact could be designed

Under the principles discussed above, the amended Pact of Bogotá could be regarded as an instrument fully co-ordinated with the OAS Charter and the United Nations Charter to which the States parties could have direct recourse, without fear of becoming subject to an obligatory procedure that exceeds its purposes and its ideas as to what would be the most adequate procedure under the Pact itself. This instrument could well have, on one hand, simpler procedures to constitute the Commission or Commissions of Investigation and Conciliation, such as a general panel having two members designated by each State Party, rather than the present multiple system which has never been implemented by the parties.

This would mean that good offices and mediation would continue to be procedures that require mutual consent or agreement. The International Court of Justice would continue to offer the possibility of acting, with binding jurisdiction, in controversies of a juridical nature when only one party resorts to it. It would mean that arbitration was a conventional recourse for all types of controversies, under the commitment “to reach agreement”, and the only obligation of the parties would be to have recourse to conciliation as a method whose solution, while also not being binding on the parties, would not lead, because of failure or non-acceptance to a continuation of the automatic procedures of the current system.

A treaty such as the amended Pact should provide a method to which all the parties would have binding recourse. We have already seen how the European Convention for Pacific Settlement of Controversies provides, for this purpose, a binding method for non-juridical controversies, conciliation, and for controversies of a juridical nature, the International Court of Justice. The Revised Act for Pacific Settlement of Disputes (United Nations, 1949) provided a similar feature. Why could not the same be done with the American Treaty on Pacific Settlement? What is there to fear?

If there were no procedures to which the parties would have binding recourse, such as conciliation, if the amended Pact had only recourses of which the parties could avail themselves when they wished, it would not correspond to the principles set forth or to Article 26 of the Charter. It would be a procedural guide and not an “American Treaty on Pacific Settlement”. It could well be called, “Treaty-Guide for Pacific Settlement Procedures”. The position the Rapporteur suggests is a middle road which would not constitute any groundbreaking initiative, but would help to make the Pact viable.

Obviously, a *variation* is possible. Since there are American States that have ratified the Pact without reservation and recognize, thereby, the automatic working of the Treaty in its full scope and consequences, such a variation would consist of stipulating that when conciliation has failed to settle a dispute, the States have two options:

“*(a)* by prior agreement between the parties, in the event the conciliation failed, the controversy would continue with the sequence of the automatic procedures set out in the current Pact; and,

(b) lacking such prior agreement between the parties, if the conciliation fails, the controversy would not be subject to the sequence of automatic procedures.”

Then, when mediation fails the parties could seek another settlement procedure similar to that contained in Article XIII.

Such an amendment would only require adding one article to the third chapter, on investigation and conciliation, or signing an additional protocol.

A parallel treaty: A treaty to parallel the Pact of Bogotá could be agreed upon. This would be a simplified form, following the style of the so-called Pact of Quito, formulated by Dr. Charles Fenwick several years ago, or the European Convention or some other similar instrument. This is not a contradictory possibility. Its purpose would be to offer a new alternative to the States which might find merit in it.

A support body: Always, under any supposition, a body to aid the States to find a pacific settlement either within or outside the Pact would be most useful. Perhaps for this reason the Rio Treaty has been able, through the Organ of Consultation and the peacemaking action provided for in Article 7, to serve the cause of pacific settlement by taking a very useful route, which, while criticized, is an example beyond all shadow of doubt of the need for a body of less severe consequences, which would revive real possibilities of the reign of peace in the Americas.

Rio de Janeiro, August 19, 1985.

(Signed) Galo LEORO F.,
Rapporteur.

Annex 24

ACT OF CONTADORA FOR PEACE AND CO-OPERATION IN CENTRAL AMERICA (REVISED VERSION)[1]

[Spanish text not reproduced]

OEA/Ser.G
CP/INF.2222
24 October 1984
Original: Spanish

October 24, 1984.

Excellency:

In accordance with instructions from our Foreign Ministries, we are sending Your Excellency a copy of the "Act of Contadora for Peace and Co-operation in Central America", with the request that it be made known to the missions of the member States.

Accept, Excellency, the renewed assurances of our highest consideration.

(Signed):

Rafael LA COLINA,
Mexico.

Francisco POSADA DE LA PEÑA,
Colombia.

Roberto LEYTON,
Panama.

Edilberto MORENO,
Venezuela.

Her Excellency Mónica Madariaga,
Chairman of the Permanent Council
of the Organization of American States,
Washington, D.C.

ACT OF CONTADORA FOR PEACE AND CO-OPERATION IN CENTRAL AMERICA

(REVISED VERSION)

PREAMBLE

The Governments of the Republics of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua:

1. *Aware* of the urgent need for strengthening peace and co-operation among the nations of the region through the observance of principles and

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[1] See **II**, Correspondence, Nos. 44, 51, 71, 73 and 74.

methods that will make possible greater understanding among the Central American Governments;

2. *Concerned* over the situation prevailing in Central America, characterized by a serious erosion of public confidence, by border incidents, the arms race, the traffic in arms, the presence of foreign advisers and other forms of foreign military presence, as well as the use of the territory of some States by irregular forces to carry out destabilizing actions against other States of the region.

Convinced:

3. That the tensions and current conflicts could become more serious and lead to a general outbreak of war;

4. That the objective of re-establishing peace and confidence in the area can be achieved only through full respect for the principles of international law, particularly the principle concerning the right of nations to choose, freely and without outside interference, the form of political, economic, and social organization that best suits their interests, through institutions that represent the will of the people, freely expressed;

5. Of the importance of establishing, developing, and strengthening democratic systems in all the countries of the region;

6. Of the need to establish political conditions designed to guarantee the security, integrity and sovereignty of the States of the region;

7. That the achievement of genuine regional stability lies in the adoption of agreements on matters of security and disarmament;

8. That, for the adoption of measures intended to halt the arms race in all its forms, the national security interests of the States of the region must be taken into account;

9. That military superiority as a political objective of the States of the region, the presence of foreign advisers and other foreign personnel, and the arms traffic endanger regional security and constitute destabilizing factors in the area;

10. That the agreements on regional security should be subject to an effective system of verification and control;

11. That the destabilization of Governments in the area, usually expressed through the promotion of or aid to irregular groups or forces, acts of terrorism, subversion or sabotage, and the use of one State's territory for actions that adversely affect the security of another State, is contrary to the basic rules of international law and of peaceful coexistence among the States;

12. That the establishment of ceilings on military development, in keeping with the needs for stability and security in the region, is highly advisable; and

13. That the establishment of instruments that will make possible application of a policy of détente should be based on the existence of a political confidence among the States that will tend to reduce the political and military tensions among them effectively;

14. *Recalling* the provisions adopted by the United Nations in regard to the definition of aggression, especially in resolution 3314 (XXIX) of the United Nations General Assembly, as well as the pertinent resolutions of the Organization of American States;

15. *Taking into Account* the Declaration on the Strengthening of International Security, adopted by the United Nations General Assembly in its resolution 2734 (XXV), as well as the corresponding relevant legal instruments of the inter-American system;

16. *Reaffirming* the need, in those cases in which deep divisions have been caused within the society, for promoting actions of national reconciliation that will enable the people to participate, in accordance with the law, in democratic political processes.

Considering:

17. That, beginning with the Charter of the United Nations in 1945 and the Universal Declaration of Human Rights in 1948, various international organizations and conferences have prepared and adopted declarations, covenants, protocols, conventions, and statutes aimed at providing effective protection to human rights in general, or to some of them specifically;

18. That not all the Central American States have accepted all existing international instruments in matters of human rights, and that it would be desirable that they do so in order to have a more complete system in this field that would make possible respect for a guarantee of human, political, civil, economic, social, religious, and cultural rights;

19. That in many cases the shortcomings of an antiquated or inadequate domestic legislation interfere with effective exercise of human rights as they have been defined in declarations and other international instruments;

20. That it should be a concern of each State to modernize and adapt its legislation so that it will be appropriate for guaranteeing the real enjoyment of human rights;

21. That one of the most effective ways of bringing about the human rights set forth in international instruments, the political constitutions, and the laws of the various States, is for the judiciary to enjoy sufficient authority and autonomy to put a stop to violations of those rights;

22. That, for this purpose, the absolute independence of the judiciary should be guaranteed; and

23. That such guarantee will be achieved only if the officers of the judiciary enjoy stability in their offices and the judicial branch has budgetary stability, so that its independence from other branches will be absolute and indisputable.

Convinced of:

24. The need to introduce fair economic and social structures that will build an authentic democratic system and allow their people to exercise fully the right to work, education, health, and culture;

25. The high degree of interdependence of the Central American countries, as well as the opportunities the process of economic integration offers to small countries;

26. The fact that the magnitude of the economic and social crisis that is affecting the region has made evident the need for making changes in the economic and social structures that will make it possible to reduce the dependence and promote the regional self-sufficiency of the Central American countries, reaffirming their own identity;

27. The fact that the process of Central American economic integration should constitute an effective instrument of economic and social development, based on justice, solidarity, and mutual benefit;

28. The fact that it is necessary to reactivate, improve, and restructure the process of Central American Economic Integration, with the active and institutional participation of all the States of the region;

29. The fact that the Central American institutions and authorities are

called upon to assume primary responsibility for reforming the existing economic and social structures and for strengthening the process of regional integration;

30. The need for an advisability of undertaking jointly economic and social development programmes that will contribute to the process of economic integration in Central America in the context of the development plans and priorities sovereignly adopted by those countries;

31. The extensive needs for investment essential to the development and economic recovery of the Central American countries and the efforts these countries have undertaken jointly to obtain financing for specific priority projects, and considering the need for expanding and strengthening the international, regional and subregional financial institutions; and

32. The fact that the regional crisis has caused massive flows of refugees and that this situation deserves urgent attention;

33. *Concerned* over the constant worsening of social conditions, including the situation of employment, education, health and housing in the Central American countries;

34. *Reaffirming*, without prejudice to the right to resort to competent international forums, their willingness to settle their disputes in the framework of the negotiation process sponsored by the Contadora Group;

35. *Recalling* the support given to the Contadora Group by resolutions 530 of the Security Council and 38/10 of the General Assembly of the United Nations, as well as resolution AG/RES.675 (XIII-0/83) of the General Assembly of the Organization of American States; and

36. *Prepared* to give full implementation to the Document on Objectives and to the Standards for Execution of the Commitments Assumed in that Document, adopted by their Ministers of Foreign Affairs in Panama on 9 September 1983, and on 8 January 1984, respectively, under the auspices of the Governments of Colombia, Mexico, Panama, and Venezuela, which constitute the Contadora Group.

Have agreed on the following:

ACT OF CONTADORA FOR PEACE AND CO-OPERATION IN CENTRAL AMERICA

PART I

COMMITMENTS

CHAPTER I

GENERAL COMMITMENTS

Sole Section. Principles

The PARTIES undertake, in conformity with the obligations they have contracted in accordance with international law:

1. To respect the following principles:

(a) Renunciation of the threat or the use of force against the territorial integrity or the political independence of States.

(b) Peaceful settlement of disputes.
(c) Non-interference in the internal affairs of other States.
(d) Co-operation among the States in the solution of international problems.
(e) Equality of rights, self-determination of nations, and promotion of respect for human rights.
(f) Sovereign equality and respect for the rights inherent in sovereignty.
(g) Refraining from conducting discriminatory practices in economic relations among States, respecting their systems of political, economic and social organization.
(h) Fulfillment in good faith of obligations contracted in accordance with international law.

2. In compliance with those principles:

(a) They shall abstain from any action incompatible with the purposes and principles of the Charter of the United Nations and of the Charter of the Organization of American States, against the territorial integrity, political independence, or unity of any of the States, and particularly from any similar action that would constitute a threat or use of force.
(b) They shall settle their disputes by peaceful means in observance of the fundamental principles of international law contained in the Charter of the United Nations and in the Charter of the Organization of American States.
(c) They shall respect existing international boundaries between States.
(d) They shall abstain from militarily occupying territory of any other State in the region;
(e) They shall abstain from any act of military, political, economic, or any other type of coercion intended to subordinate to their own interest exercise by the other States of the rights inherent in their sovereignty.
(f) They shall take the actions necessary to guarantee the inviolability of their borders by irregular groups or forces that seek to destabilize the Government of a neighbouring State from their own territory.
(g) They shall not permit their territory to be used to carry out acts that would be contrary to the sovereign rights of other States, and they shall keep watch so that conditions prevailing therein will not threaten international peace and security.
(h) They shall respect the principle that no State or group of States has the right to interfere directly or indirectly by armed force or by any other form of interference in the internal or external affairs of another State.
(i) They shall respect the right to self-determination of nations, without external intervention or coercion, avoiding the threat or the direct or covert use of force to break the national unity or territorial integrity of any other State.

CHAPTER II

COMMITMENTS ON POLITICAL MATTERS

Section 1. Commitments in Regard to Regional Détente and Building of Confidence

The PARTIES undertake:

3. To promote mutual confidence by every means available and avoid any

action capable of breaking the peace and security in the Central American area.

4. To abstain from issuing or promoting propaganda in favour of violence or war, as well as hostile propaganda against any Central American Government, and to comply with and disseminate the principles of peaceful coexistence and friendly co-operation.

5. For that purpose, their respective government authorities:

(*a*) Shall avoid any oral or written statement that may aggravate the situation of conflict the area is experiencing.
(*b*) Shall urge the mass media to contribute to understanding and co-operation among the peoples of the region.
(*c*) Shall promote greater contact and knowledge among their peoples through co-operation in all areas related to education, science, technology, and culture.
(*d*) Shall jointly consider future actions and mechanisms that will contribute to the attainment and strengthening of a climate of stable and lasting peace.

6. To seek jointly a regional solution that will eliminate the causes of tension in Central America, affirming the inalienable rights of the nations in the face of foreign pressures and interests.

Section 2. Commitments in Regard to National Reconciliation

Each of the PARTIES acknowledges to the other Central American States the commitment assumed with its own people to guarantee the preservation of domestic peace as a contribution to the peace of the region, and for that purpose resolves:

7. To adopt measures aimed at the establishment or, where appropriate, the improvement of representative and pluralistic democratic systems that will guarantee the effective participation of the people, politically organized, in decision making and that will assure free access by the diverse currents of opinion to honest elections held at regular intervals, based on full observance of the rights of citizens.

8. In those cases in which deep divisions have been caused within the society, to promote on an urgent basis actions of national reconciliation that will enable the people to participate, with full guarantee, in authentic democratic political processes based on justice, freedom, and democracy; and, for that purpose, to establish mechanisms that will permit, in accordance with law, dialogue with the opposing groups.

9. To issue, and where appropriate to authenticate, expand, and improve legal standards that would offer a genuine amnesty that would permit its citizens to be fully reincorporated into its political, economic, and social life.

In the same way, to guarantee the inviolability of the life, freedom, and personal safety of persons granted amnesty.

Section 3. Commitments in Regard to Human Rights

The PARTIES undertake, in conformity with their respective domestic laws and with the obligations they have contracted in accordance with international law:

10. To guarantee full respect for human rights and, for that purpose, to comply with the obligations contained in the international legal instruments and the constitutional provisions on the subject.

11. To begin their respective constitutional procedures to become parties to the following international instruments:

- *(a)* International Covenant on Economic, Social and Cultural Rights, of 1966.
- *(b)* International Covenant on Civil and Political Rights, of 1966.
- *(c)* Optional Protocol to the International Covenant on Civil and Political Rights, of 1966.
- *(d)* International Covenant on the Elimination of All Forms of Racial Discrimination, of 1965.
- *(e)* Convention on the Status of Refugees, of 1951.
- *(f)* Protocol relating to the Status of Refugees, of 1967.
- *(g)* Inter-American Convention on the Granting of Political Rights to Women, of 1952.
- *(h)* Convention on the Elimination of all Forms of Discrimination against Women, of 1979.
- *(i)* Protocol Amending the Convention on the Abolition of Slavery, of 1926.
- *(j)* Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, of 1956.
- *(k)* Convention on the Political Rights of Women, 1953.
- *(l)* American Convention on Human Rights, 1969, taking note of its Articles 45 and 62.

12. To prepare and submit to their competent internal organs the necessary legislative initiatives for the purpose of expediting the process of revising and updating their laws so that they will be better suited to foster and guarantee due respect for human rights.

13. To prepare and submit to the competent internal organs legislative initiatives aimed at:

- *(a)* Guaranteeing the stability of officials in the judicial branch so that they can operate without political pressure and can themselves guarantee the stability of subordinate officials.
- *(b)* Guaranteeing the budgetary stability of the judicial branch so that its independence from the other branches will be absolute and unquestionable.

Section 4. Commitments in Regard to Electoral Processes and Legislative Co-operation

Each of the PARTIES acknowledges to the other Central American States the commitment assumed with its own nation to guarantee the preservation of domestic peace as a contribution to peace in the region, and to this end resolves:

14. To take the appropriate measures that will guarantee under equal circumstances the participation of political parties in the electoral processes, ensuring their access to the mass communication media and their freedom of assembly and expression.

15. They also undertake:

(a) To put the following measures into practice:

1. To promulgate or review laws on election in order to hold elections that will guarantee effective participation by the people.
2. To establish independent electoral bodies that will prepare a reliable

list of registered voters and that will ensure that the process will be impartial and democratic.

3. To issue or, when appropriate, to update the rules that will guarantee the existence and participation of political parties representing the various currents of opinion.
4. To establish an election schedule and to take measures that will ensure participation by the political parties under equal circumstances.

(b) To propose to their respective legislative bodies:

1. That they hold regular meetings at alternate sites that will make it possible to exchange experiences, to contribute to détente and to foster better communication for closer relations among the countries of the area.
2. That they take measures to maintain relations with the Latin American parliament and the respective working committees.
3. That they exchange information and experience on matters of their competence and that, for purposes of a comparative study, they compile the election laws in effect in each country, as well as related provisions.
4. That they be present as observers at the various stages in the electoral processes carried out in the region. For this purpose, it will be indispensable to have an express invitation from the Central American State engaged in the electoral process.
5. That they hold technical meetings at regular intervals in the place and with the agency determined by consensus at each preceding meeting. The nature of the first meeting shall be determined through consultation with the Central American foreign ministries.

CHAPTER III

COMMITMENTS ON SECURITY MATTERS

In accordance with the obligations they have undertaken in accordance with international law, the PARTIES assume the following commitments:

Section 1. Commitments in Regard to Military Manœuvres

16. To abide by the following provisions in holding military manœuvres:

(a) In the event national or joint military manœuvres are held in areas within thirty (30) kilometres of the border, the corresponding advance notice shall be made to the bordering countries and to the Commission for Verification and Control referred to in Part II of this Act, at least thirty (30) days in advance.

(b) The notification shall contain the following items:

1. Designation
2. Purpose
3. Participating forces
4. Geographic locations
5. Schedule
6. Equipment and weapons to be used.

An invitation must be extended to observers from bordering countries.

17. To proscribe the holding of international military manœuvres in their corresponding territories. Any manœuvre of this kind which is under way shall be suspended within thirty days after this Act is signed.

Section 2. Commitments in Regard to Weapons

18. To stop all aspects of the arms race and immediately to begin negotiations on the control and reduction of the current weapons inventory and on the number of troops under arms.

19. Not to introduce new weapons systems that will qualitatively and quantitatively change current inventories of war matériel.

20. Not to introduce, possess or make use of chemical, biological, radiological or other weapons that can be considered excessively noxious or as having indiscriminate effects.

21. To send the Commission for Verification and Control their respective current inventories of weapons, installations and troops under arms within thirty (30) days following the date on which this act is signed. The inventories shall be prepared in accordance with the basic definitions and standards decided upon in the Appendix and in item 22 of this section. Upon receiving the inventories, the Commission shall within thirty days carry out the technical studies that will serve to establish ceilings on the military development of the region's States, taking into account their national security interests, and to stop the arms race.

Based on the foregoing, the PARTIES agree to the following stages of implementation:

First stage: Once they have delivered their respective inventories, the PARTIES are to cease all acquisition of war matériel. The moratorium shall be in effect until they decide upon ceilings in the second stage.

Second stage: The PARTIES shall establish ceilings within thirty days for weapons of the following kinds: combat aircraft and helicopters, tanks and armoured vehicles, artillery pieces, short-, medium-, and long-range rockets and guided missiles and launchers, military ships or vessels and ships or vessels that can be used for military purposes.

Third stage: After conclusion of the preceding stage and within thirty days, the PARTIES shall establish ceilings on troops and on installations that can be used in military activities.

Fourth stage: The PARTIES may initiate negotiations on matters whose discussion is considered indispensable. Despite this, the PARTIES may by mutual agreement change the deadlines set for the negotiation and establishment of ceilings.

22. The following basic standards shall determine the Central American States' military development ceilings, in accordance with the requirements of stability and security in the region:

(a) No armed institution shall have the political objective of seeking hegemony over the other forces considered individually.

(b) The definition of national security must consider the economic and social development existing at a specific time and the development sought.

(c) For its determination, studies covering the following aspects in general must be made:

1. Appreciation of the State's domestic and external security requirements
2. Territorial extension
3. Population

4. Distribution of economic resources, infrastructure and population in the national territory
5. Length and nature of land and maritime borders
6. Military expenditures with relation to gross domestic product (GDP)
7. Military budget with relation to public expenditures and in comparison with other social indicators
8. Geographical features and situation and geopolitical position
9. Highest level of military technology suitable for the region.

23. To initiate the constitutional procedures so that, in the event they have not already done so, they will be in a position to sign and ratify or accede to treaties and other international disarmament agreements.

Section 3. Commitments in Regard to Foreign Military Bases

24. Not to authorize the installation in their respective territories of foreign military bases or schools.

25. To eliminate the foreign military bases or schools existing in their respective territories within six months from the date this Act is signed.

Section 4. Commitments in Regard to Foreign Military Advisers

26. To deliver to the Commission for Verification and Control a list of foreign military advisers and of other foreign personnel participating in military and security activities in their territory within thirty days following the signing of this Act. The definitions contained in the Appendix shall be taken into account in preparing the list.

27. To establish a schedule for gradual withdrawal with a view to elimination of the foreign military advisers and other foreign personnel, which will include the immediate withdrawal of those advisers who are performing duties in operational and training areas. For this purpose, the studies and recommendations of the Commission for Verification and Control shall be taken into account.

28. A control registry shall be maintained concerning the advisers who perform technical duties related to the installation and maintenance of military equipment, in accordance with the terms established in the corresponding contracts or agreements. Based on this registry, the Commission for Verification and Control shall attempt to establish reasonable limits on the number of advisers of this kind.

Section 5. Commitments in Regard to Arms Traffic

29. To eliminate the intraregional and extraregional traffic in weapons consigned to individuals, organizations, irregular forces or armed bands that intend to destabilize the Governments of the States Parties.

30. To establish for this purpose internal control systems at airports, landing strips, ports, terminals, border passes, land, air, ocean and river routes, and at any other point or area that can be used for arms traffic.

31. To denounce violations in this matter based on presumption, or on verified facts to the Commission for Verification and Control, with sufficient terms of reference to enable it to carry out the necessary investigations and to present whatever conclusions and recommendations it may deem advisable. When pertinent, and for purposes of verification, the following criteria, among others, shall be taken into account:

(*a*) Origin of the arms traffic.
(*b*) Personnel involved.
(*c*) Type of weapons, munitions, equipment and other kinds of military supplies.
(*d*) Extraregional means of transportation.
(*e*) Extraregional transportation routes.
(*f*) Storage bases for weapons, munitions, equipment and other kinds of military supplies.
(*g*) Intraregional traffic areas and routes.
(*h*) International means of transportation.
(*i*) Receiving units.

Section 6. Commitments in Regard to Prohibition of Support to Irregular Forces

32. To refrain from providing any political, military or financial support or support of any other kind to individuals, groups, irregular forces or armed bands that advocate the overthrow or destabilization of other Governments, and to prevent with all means within their reach utilization of their territory for the purpose of attacking or organizing attacks, acts of sabotage, abductions or criminal acts in the territory of another State.

33. To exercise close surveillance over their respective borders for the purpose of preventing their own territory from being used to carry out any armed action against a neighbouring State.

34. To disarm and withdraw from the border area any irregular group or force that has been identified as being responsible for actions against a neighbouring State.

35. To dismantle and deny the use of installations, means and facilities for logistical and operational support in their territory when it is being used to undertake actions against neighbouring Governments.

Section 7. Commitments in Regard to Terrorism, Subversion or Sabotage

36. To refrain from providing political, military or financial support or support of any other kind to subversive, terrorist or sabotage activities designed to destabilize Governments of the region.

37. To refrain from organizing, encouraging or participating in acts of terrorism, subversion or sabotage in another State or from allowing activities organized within their territory aimed at the commission of such acts.

38. To comply with the following international treaties and conventions:

(*a*) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft.
(*b*) Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that Are of International Significance.
(*c*) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.
(*d*) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents.
(*e*) International Convention against the Taking of Hostages.

39. To initiate constitutional procedures so that, in the event they have not already done so, they will be in a position to sign and ratify or accede to

the international treaties and agreements mentioned in the preceding paragraph.

40. To respect the commitments set forth in this section, without prejudice to compliance with the international treaties and other agreements concerning diplomatic and territorial asylum.

41. To prevent in their corresponding territories participation in criminal acts by individuals belonging to foreign terrorist groups or organizations. For this purpose, they shall strengthen the co-operation of the responsible offices in migratory and political matters and co-operation among the corresponding civil authorities.

Section 8. Commitments in Regard to Direct Communication Systems

42. To establish a regional communication system that will guarantee immediate and timely connection between the competent governmental and military authorities, for the purpose of preventing incidents.

43. To establish mixed security commissions for the purpose of preventing and settling conflicts between neighbouring States.

CHAPTER IV

COMMITMENTS ON ECONOMIC AND SOCIAL MATTERS

Section 1. Commitments in the Economic and Social Area

To strengthen the process of Central American economic integration and the institutions which constitute and support it, the PARTIES undertake to do the following:

44. To revitalize, improve and reorganize the process of Central American economic integration, harmonizing it with the various forms of political, economic and social organization of the area's countries.

45. To ratify resolution 1/84 of the XXXth Meeting of Ministers Responsible for Central American Economic Integration, of 27 July 1984, aimed at re-establishment of the institutional nature of the Central American integration process.

46. To support and encourage the adoption of agreements aimed at strengthening intra-Central American trade in the legal framework and spirit of integration.

47. Not to adopt or support coercive or discriminatory measures detrimental to the economy of any of the Central American countries.

48. To adopt measures aimed at strengthening the area's financial agencies, including, among others, the Central American Bank for Economic Integration, supporting their efforts toward obtaining resources and the diversification of their operations, preserving the decisive power and the interests of all the Central American countries.

49. To strengthen the multilateral payment systems of the Central American Fund of the Common Market and to revitalize those which are accomplished through the Central American Clearing House. Available international financial assistance may be sought to support these aims.

50. To undertake sectoral co-operative projects in the area, such as the electric energy production and distribution system, the regional food security sys-

tem, the plan for priority health requirements in Central America and Panama and others that will contribute to Central American economic integration.

51. To examine jointly the Central American external debt problem based on an evaluation that will take into account each country's domestic situation, its ability to pay, the area's critical economic situation, and the inflow of additional resources necessary to cover its economic and social development.

52. To support the process of preparation and subsequent application of a new Central American tariff and customs system.

53. To adopt joint measures for the defence and promotion of their exports, integrating in so far as possible the stages of processing, marketing, and transportation of their products.

54. To adopt the necessary measures to grant juridical personality to the Central American Monetary Council.

55. To support at the highest level the efforts made by CADESCA, in co-ordination with subregional agencies, to obtain from the international community the necessary financial resources for Central America's economic recovery.

56. To apply international labour standards and adapt their internal legislations to them, with co-operation from the ILO, in particular those that contribute to the recovery of Central American societies and economies. In addition, also with ILO's co-operation, to develop programmes for employment generation, labour training and instruction, and the application of appropriate technologies that will include greater use of each country's manpower and natural resources.

57. To ask the Pan American Health Organization and UNICEF, as well as other development agencies and the international financial community, for their support in financing the Priority Health Needs Plan for Central America and Panama approved by the Ministers of Health of the Central American Isthmus in San José on 16 March 1984.

Section 2. Commitments in Regard to Refugees

The PARTIES undertake to make every effort aimed at the following:

58. If they have not done so yet, to take all steps required under the Constitution to accede to the 1951 Convention on the Status of Refugees and the 1967 Protocol relating to the Status of Refugees.

59. To adopt the terminology established in the Convention and in the Protocol referred to above in order to distinguish refugees from other categories of immigrants.

60. To establish the necessary internal mechanisms to apply the provisions of the Convention and Protocol referred to in paragraph 58 at the time of accession.

61. To establish mechanisms for consultation among the Central American countries with representatives from government offices responsible for dealing with the problem of refugees in each State.

62. To support the work of the United Nations High Commissioner for Refugees (UNHCR) in Central America and to set up direct co-ordination mechanisms to facilitate carrying out its mandate.

63. To ensure that any repatriation of refugees shall be voluntary, personally attested to and with the co-operation of the UNHCR.

64. In order to facilitate the repatriation of refugees, to set up tripartite committees made up of representatives of the State of origin, the receiving State, and the UNHCR.

65. To strengthen the programmes for protection of and assistance to refugees, particularly regarding health, education, work, and security.

66. To establish programmes and projects aimed at the self-sufficiency of refugees.

67. To train the officials responsible in each State for refugee protection and assistance, in co-operation with the UNHCR or other international agencies.

68. To appeal to the international community for immediate aid for Central American refugees, both directly through bilateral or multilateral agreements and through the UNHCR and other organizations and agencies.

69. Working in co-operation with the UNHCR, to seek out other countries that may be willing to receive Central American refugees. In no case shall a refugee be taken to a third country against his will.

70. That the area Governments make every effort to eradicate the causes behind the refugee problem.

71. That once the bases for voluntary and individual repatriation have been agreed upon, with full guarantees for refugees, receiving countries allow official delegations from the country of origin to visit refugee camps, in the company of representatives of the UNHCR and of the receiving country.

72. That, in co-ordination with the UNHCR, receiving countries facilitate the procedures involved in the departure of refugees when they are voluntarily and individually repatriated.

73. To establish measures in receiving countries that will help avert refugee participation in activities directed against the country of origin, while observing at all times the human rights of the refugees.

PART II

COMMITMENTS IN REGARD TO EXECUTION AND FOLLOW-UP

The PARTIES agree to establish the following mechanisms for execution and follow-up of the commitments undertaken herein:

1. Ad hoc *Committee for Evaluation of and Follow-up on Commitments on Political Matters and in Regard to Refugees*

(a) Composition

The Committee shall be composed of five (5) persons of recognized competence and impartiality proposed by the States who make up the Contadora Group and accepted of common accord by the PARTIES. The nationalities of the members of the Committee shall be distinct from those of the PARTIES.

(b) Functions

The Committee shall receive and evaluate the reports the PARTIES undertake to submit on how they have complied with the commitments regarding national reconciliation, human rights, electoral processes, and refugees.

In addition, the Committee shall be open to communications on these matters sent to it for information by organizations or persons that may provide useful elements for the evaluation.

With those elements, the Committee shall prepare a periodic report that, in addition to the evaluation, shall include proposals and recommendations on how best to comply with the commitments. The report shall be sent to the PARTIES and to the Governments of the Contadora Group.

(c) Rules of Procedure

The Committee shall prepare its own rules of procedure and shall transmit them to the PARTIES.

2. *Commission for Verification and Control in Security Matters*

(a) Composition

The Commission shall be composed of:

- Four commissioners, representing States of known impartiality that have a genuine interest in helping to settle the Central American crisis. They shall be proposed by the Contadora Group and accepted by the PARTIES and shall have voice and vote in the Commission's decisions. Co-ordination of the Commission's work shall rotate among the members.
- A Latin American Executive Secretary appointed by the Contadora Group in common accord with the PARTIES, who shall have voice and vote in the decisions of the Commission and who shall see to it that it functions continuously.
- A representative of the Secretary-General of the United Nations and another of the Secretary General of the OAS, as observers.

(b) Establishment

The Commission shall be established no later than thirty (30) days after this document is signed.

(c) Functions

- To receive from the PARTIES updated inventories of weapons, installations, and troops under arms drawn up in accordance with the terms set forth in the Appendix.
- To carry out technical studies for use in setting ceilings on the military development of the PARTIES in the region in accordance with the basic criteria established in commitment 22 of this document.
- To verify that no new weapons that would qualitatively and quantitatively modify present inventories have been introduced and that no weapons prohibited by this Act have been used.
- To establish a registry of all commercial transfers of weapons carried out between the PARTIES, including donations and other transactions carried out within the framework of military aid agreements with other Governments.
- To verify the dismantling of foreign military installations, as established in this Act.
- To receive the census of foreign military advisers and to verify the withdrawal of such advisers in accordance with the schedule agreed upon.
- To verify compliance with this Act in the field of weapons traffic and to look into all denunciations made in this regard. For this purpose, the following criteria should be considered:

(1) Origin of weapons traffic: The air or seaport used to ship the weapons, munitions, equipment and other types of military supplies going to the Central American region should be specified under this criterion.

(2) Personnel involved: Persons, groups or organizations involved in arranging or carrying out weapons traffic, including the participation of Governments or their representatives.

(3) Types of weapons, munitions, equipment and other types of military supplies: A description will be provided under this category as to the type and calibre of weapons, the country of manufacture, whether the country of origin is other than the country of manufacture, as well as the quantities of each type of weapon, munition, equipment and other types of military supplies.

(4) Extraregional means of transport: The means of land, sea or air transport should be indicated, including nationality of same.

(5) Extraregional transportation routes: Definition of the traffic routes that have been utilized prior to reaching Central American territory, including stopovers or intermediate destination points.

(6) Bases where weapons, munitions, equipment and other types of military supplies are stored.

(7) Areas and routes of intraregional traffic: Description of the areas and routes and the involvement or acquiescence of Governments or of governmental or political sectors in carrying out weapons traffic. Inclusion of the frequency of utilization of such areas and routes.

(8) Means of international transport: Determination of the means of transport utilized, to whom they belong and the measures taken by Governments, political or governmental sectors to facilitate such transport, indicating whether it involves clandestine flights landing and unloading war matériel or dropping it off by parachute, and the utilization of small motor boats loaded on the high seas.

(9) Receiving unit: Determination of the identity of persons, groups and organizations to whom weapons are shipped.

— To verify compliance with this Act in so far as concerns irregular forces and the non-utilization of a State's own territory in a destabilizing action against another State, as well as looking into any denunciation in this regard.

— To verify compliance with the procedures for reporting national or joint military manœuvres covered under this Act.

(*d*) Standards and Procedures

— The Commission shall hear any well-founded denunciation of violations of the security commitments undertaken in this Act, shall inform the PARTIES involved and shall initiate any investigations it may deem appropriate.

— The Commission shall conduct its investigations by means of on site inspection, the taking of testimony and any other procedure it may deem necessary for carrying out its functions.

— The Commission shall draw up, in the case of denunciations of violations or failure to comply with the commitments undertaken in this Act in security matters, a report containing recommendations addressed to the PARTIES involved.

— The Commission shall forward all its reports to the Ministers of Foreign Affairs of Central America.

— The PARTIES shall extend full co-operation to the Commission, providing it with prompt and broad assistance to enable it to adequately carry out its functions. The Commission shall ensure the confidentiality of all information requested or received in the course of its investigations.

(e) Rules of Procedure

Once established, the Commission shall draw up its own Rules of Procedure and shall inform the PARTIES thereof.

3. Ad Hoc *Committee for Evaluation of and Follow-up on Commitments in the Economic and Social Area*

(a) Integration

For purposes of this Act, the Meeting of Ministers Responsible for Central American Economic Integration shall become the *Ad Hoc* Committee for Evaluation of and Follow-up on Commitments in the Economic and Social Area.

(b) The Committee shall receive the reports of the PARTIES with regard to progress in carrying out commitments in the economic and social area.

The Committee shall regularly conduct evaluations on progress made in carrying out commitments in the economic and social area, for which purpose it will have available the information gathered by the PARTIES and by the competent international and regional organizations.

The Committee shall present, in its regular reports, proposals for strengthening regional co-operation and furthering development plans, with particular emphasis on the aspects pointed out in the commitments in this Act.

PART III

FINAL PROVISIONS

1. The commitments undertaken by the PARTIES in this Act are juridical in nature, and therefore, binding.

2. This Act shall be ratified in accordance with the constitutional procedures established in each of the Central American States. The instruments of ratification shall be deposited with the Governments of the States making up the Contadora Group.

3. This Act shall go into effect when the five Central American signatory States have deposited their instruments of ratification.

4. The PARTIES, as of the date of signature, shall abstain from any actions whereby the objective and purpose of this Act may be defeated.

5. The mechanisms referred to in Part II shall come into provisional operation thirty (30) days after the date of signature of this Act.

The PARTIES shall take the necessary measures, prior to this deadline, to ensure such provisional operation.

6. Any dispute regarding the interpretation or application of this Act that has not been resolved through the mechanisms envisaged in Part II shall be submitted to the Ministers of Foreign Affairs of the PARTIES for their consideration and decision, which will require the affirmative vote of all the PARTIES.

7. In the event the dispute persists, it shall be submitted to the Ministers of Foreign Affairs of the Contadora Group, who shall meet at the request of any of the PARTIES.

8. The Ministers of Foreign Affairs of the States making up the Contadora Group shall use their good offices in order that the PARTIES involved may be able to resolve the specific situation submitted to them for consideration. If the problem is not solved through this procedure, they may suggest another means of peacefully resolving the dispute, in accordance with Article 33 of the Charter of the United Nations and Article 24 of the Charter of the Organization of American States.

9. This Act does not allow for any reservations.

10. This Act shall be recorded by the PARTIES with the Secretary-General of the United Nations and the Secretary General of the Organization of American States, in accordance with Article 102 of the Charter of the United Nations and Article 118 of the Charter of the Organization of American States.

Done in the Spanish language in nine original copies, in the city of
on , 1984.

Appendix

The PARTIES agree on the following definitions of military terms:

1. Registry: Numerical or graphic data on military, paramilitary and security personnel, as well as military installations.

2. Inventory: Detailed list of weapons and military equipment of national or foreign ownership, with the largest possible number of specifications.

3. Census: Numerical data on foreign military or civilian personnel carrying out advisory functions in matters of defence and/or security.

4. Military installation: Establishment or infrastructure including airports, barracks, forts, encampments, and air, naval or similar installations under military jurisdiction, including their geographical location.

5. Organization and equipment chart (OEC): A document stating the mission, organization, equipment, capacities and limitations of a standard military unit at its various levels.

6. Military equipment: Individual and combined material of national or foreign ownership used by a military force in order to sustain itself and conduct operations, not including weapons.

7. Classification of weapons:

(a) By kind:

1. Conventional
2. Chemical
3. Biological
4. Radiological.

(b) By range:

1. Short-range: Portable individual and collective weapons
2. Medium-range: Non-portable support weapons (mortars, howitzers and artillery pieces)
3. Long-range: Rockets and guided missiles, which in turn are divided into:

- *(a)* Short-range rockets: maximum range under twenty (20) kms
- *(b)* Long-range rockets: range of twenty (20) kms or more
- *(c)* Short-range guided missiles: maximum range is up to one hundred (100) kms
- *(d)* Medium-range guided missiles: range from one hundred (100) kms to five hundred (500) kms
- *(e)* Long-range guided missiles: range from five hundred (500) kms and up.

(c) By calibre and weight:

1. Light: one hundred and twenty (120) millimetres or less
2. Medium: over one hundred and twenty (120) millimetres and less than one hundred and sixty (160)
3. Heavy: over one hundred and sixty (160) millimetres and less than two hundred and ten (210) millimetres
4. Very heavy: over two hundred and ten (210) millimetres.

(d) By trajectory:

1. Flat trajectory weapons
2. Curved trajectory weapons
    - *(a)* Mortars
    - *(b)* Howitzers
    - *(c)* Artillery pieces
    - *(d)* Rockets.

(e) By means of transportation:

1. On foot
2. By horse
3. Towed or drawn
4. Self-propelled
5. All weapons that can be transported by road, railroad, boat or air
6. Those transported by air are classified as follows:
    - *(a)* Helicopter-borne
    - *(b)* Air-borne.

8. Features to take into account in the different types of airplanes and helicopters:

- *(a)* Model
- *(b)* Number
- *(c)* Crew
- *(d)* Make
- *(e)* Speed
- *(f)* Capacity
- *(g)* Propulsion system
- *(h)* With or without guns
- *(i)* Type of armament
- *(j)* Operational range
- *(k)* Navigation system
- *(l)* Communications system
- *(m)* Type of mission performed.

9. Features to consider in the various ships or boats:

(a) Type of ship
(b) Shipyard and year built
(c) Tonnage
(d) Displacement capacity
(e) Draft
(f) Length
(g) Propulsion system
(h) Type of armament and aiming system
(i) Crew.

10. Services: Logistic and administrative services for general support to military, paramilitary, and security forces.

11. Military educational centres: Facilities for training and development of military personnel at the various levels and areas of specialization.

12. Military base: Land, sea, and air space including military installations, personnel and military equipment under a military command. The definition of foreign military base shall take into account the following factors:

— Administration and control
— Sources of financing
— Percentage of local and foreign personnel
— Bilateral agreements
— Location and geographical area
— Conveyance of part of the territory to another State
— Number of troops.

13. Foreign military installations: Those that have been built for use by foreign units for manœuvres, training or other military purposes. Pursuant to covenants or bilateral agreements, such installations may be temporary or permanent.

14. Foreign military advisers: Military and security advisers are foreign military or civilian personnel carrying out technical, training, or advisory duties in the following areas of operation: tactics, logistics, strategy, organization, and security in land, sea, air, or security forces in the Central American States pursuant to agreements with one or various Governments.

15. Arms traffic: Arms traffic means all kinds of transfers by Governments, persons, or regional or extraregional groups of arms consigned to groups, irregular forces or armed bands seeking to destabilize Governments of the region. This also includes transit of such traffic through the territory of a third State, with or without consent, on its way to those groups in another State.

16. National military manœuvres: Training exercises or mock combat or war that troops carry out in time of peace. The armed forces of the country participate in their own territory, and they may include land, sea and air units, for the purpose of increasing their operational capability.

17. International military manœuvres:

All those operations carried out by the armed forces of two or more countries in the territory of one of them or in an international area, including land, sea and air units in order to increase their operational capability and develop joint co-ordination measures.

18. Inventories prepared in each State separately, for each of its armed forces including the troops, weapons and munitions, equipment and installations of forces listed below and according to their own systems of organization:

(a) Security forces

1. Border guards
2. Urban and rural guards
3. Military forces attached to other ministries
4. Public security forces
5. Training and development centre
6. Others.

(b) Naval forces

1. Location
2. Type of base
3. Number and features of the naval fleet. Type of weapons
4. Defence system. Type of weapons
5. Communications systems
6. War matériel services
7. Air or land transportation services
8. Health services
9. Maintenance services
10. Quartermaster services
11. Recruitment and length of service
12. Training and development centre
13. Others.

(c) Air forces

1. Location
2. Runway capability
3. Number and features of the air fleet. Type of weapons
4. Defence system. Type of weapons
5. Communications systems
6. War matériel services
7. Health services
8. Land transportation services
9. Training and development centres
10. Maintenance services
11. Quartermaster services
12. Recruitment and length of service
13. Others.

(d) Army forces

1. Infantry
2. Motorized infantry
3. Airborne infantry
4. Cavalry
5. Artillery
6. Armoured
7. Communications
8. Engineers
9. Special forces
10. Reconnaissance troops
11. Health services
12. Transportation services
13. War matériel services

14. Maintenance services
15. Quartermaster services
16. Military police
17. Training and development centre
18. This document should include precise information on the system of induction, recruitment, and length of service
19. Others.

(e) Paramilitary forces

(f) Information requirements for airports: Existing airfields

1. Precise location and category
2. Location of installations
3. Dimensions of the takeoff, taxiing, and maintenance runways
4. Facilities: buildings, maintenance installations, fuel supplies, navigational aids, communications systems.

(g) Information requirement for terminals and ports:

1. Location and general features
2. Entry and access channels
3. Jetties
4. Capacity of the terminal.

(h) Personnel: From the standpoint of personnel, it is necessary to have the number of troops in active service, in the reserves, in the security forces, and in paramilitary organizations. Moreover, the information on advisers should include the number, immigration status, specialization, nationality, and length of stay in the country, as well as agreements or contracts, as the case may be.

(i) In relation to armament, munitions of all kinds should be included, as well as explosives, ammunition for portable weapons, artillery, bombs and torpedos, rockets, hand and rifle grenades, depth charges, land and sea mines, fuses, grenades for mortars and howitzers, etc.

(j) In national and foreign military installations, include military and hospitals' aid stations, naval bases, airports and landing strips.

ADDITIONAL PROTOCOL TO THE ACT OF CONTADORA FOR PEACE AND CO-OPERATION IN CENTRAL AMERICA

The undersigned plenipotentiaries, fully empowered by their respective Governments,

Convinced that it is necessary to have the effective co-operation of the international community in order to ensure the full force, effectiveness, and viability of the Act of Contadora for Peace and Co-operation in Central America, adopted by the countries of that region,

Have agreed as follows:

1. To abstain from any act whereby the objective and purpose of the Act would be defeated.

2. To co-operate with the Central American States in the terms in which they so request by common agreement, for attainment of the objective and purpose of the Act.

3. To provide their full support to the Commission for Verification and Control in Security Matters in the performance of its duties, when so requested by the PARTIES.

4. This Protocol shall be open to signature by all States that desire to contribute to peace and co-operation in Central America. Such signature shall be made before any of the Governments depositories of the Act.

5. This Protocol shall enter into force for each signatory State on the date of its signature by each of them.

6. This Protocol shall be deposited with the Governments of the States that make up the Contadora Group.

7. This Protocol does not allow for any reservations.

8. This Protocol shall be recorded with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations.

Done in the Spanish language in four original copies in the city of
on , 1984.

For the Government of Colombia. For the Government of Mexico.

For the Government of Venezuela. For the Government of Panama.

Annex 25

NOTE FROM HONDURAS TO THE UNITED NATIONS, 18 APRIL 1984

[Spanish text not reproduced]

Tegucigalpa, D.C., April 18, 1984.

His Excellency Javier Pérez de Cuéllar,
Secretary-General of the United Nations,
New York, New York.

Mr. Secretary General:

I have the honor to express to Your Excellency[1] the deep concern of the Government of Honduras regarding the new international-level initiative undertaken by the Government of Nicaragua. The purpose of this initiative is to remove from the jurisdiction of the group seeking a peaceful settlement, the Contadora Group (Colombia, Mexico, Panama, and Venezuela), the discussion of the political, economic, social, and security crisis which is affecting the Central American region and which, because of its complex nature, requires a comprehensive, multilateral solution.

Your Excellency is aware that this crisis is the result of internal conflicts in certain countries of the area, a lack of respect for human rights, economic and social underdevelopment, and, most especially, the arms race and the inordinate build-up of the Nicaraguan Armed Forces. The Government of Nicaragua is engaged in the destabilization of neighbouring governments by providing encouragement, financing, training, and logistical and communications assistance to groups of insurgents from other Central American countries with a view to establishing sympathetic governments within those countries.

It was precisely in order to seek a comprehensive solution to the Central American crisis that the Contadora Group proposed direct negotiations between the nations of the region. That proposal was accepted by the Government of Honduras, which, from the start, supported it fully and participated actively in all meetings convened by the Contadora Group.

On April 4, 1983, the Government of Honduras submitted to the Permanent Council of the Organization of American States a draft resolution aimed at restoring peace to the Central American region. On the request of the Contadora Group, submitted to the Permanent Council through the permanent representative of Colombia, Honduras agreed to suspend discussion of its draft resolution so that the direct negotiations sponsored by this group of OAS member countries would have a chance to achieve positive results. In this respect, His Excellency Bernardo Sepúlveda, Secretary of Foreign Relations of Mexico, acknowledged at a press conference in Mexico City on April 13, 1983, that the conciliatory attitude of Honduras within the OAS was what had made the fraternal effort of the Contadora Group possible.

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[1] See II, Correspondence, Nos. 46, 51, 71, 73 and 74.

Referring to the Panama meeting of the Contadora Group ministers, during which this effort was decided upon, the Mexican Foreign Minister said:

> "First of all, it was realized that the immediate concern was to ensure that the OAS Permanent Council would not hamper the Foreign Ministers of the Contadora Group in their efforts to find solutions for Central America. This was an urgent issue inasmuch as the OAS Permanent Council was scheduled to consider a draft resolution submitted by Honduras that same Monday afternoon. Fortunately, through a series of conversations we had with other parties concerned, an agreement was reached to postpone consideration of the draft resolution in the OAS Permanent Council, and this relieved the pressure so that the issue could be shifted from the regional forum to the Panama forum — that is to say, to the Foreign Ministers of the Contadora Group. At the same time, it was clear that it would also be necessary to take steps to prevent duplication in the United Nations system of efforts that had just begun in Panama on the previous Monday.
>
> The parties concerned welcomed our proposal enthusiastically and decided to ask the OAS Permanent Council to postpone its consideration of the issue. This was the first action taken on the matter [stated Minister Sepúlveda] and as I said before, it freed us by making it possible for us to exercise direct jurisdiction over the problem."

In more than a year of delicate multilateral negotiations, the Contadora Group has had the full support of the Organization of American States (AG/RES.675-XIII-0/83) and the United Nations General Assembly (res. 38/10) and Security Council (res 530-1983), as well as the international community in general, regardless of ideological, political, economic, and legal systems.

That is why the Government of Honduras considers it necessary and in the best interests of the nations of the Central American region and of other peace-loving nations for the Contadora Group to continue its efforts to achieve a lasting and stable peace in the region without this process being hampered by some country seeking recourse to other means of peaceful solution.

In accordance with this viewpoint, which is shared by the majority of the Central American countries and by the Contadora Group, the Government of Honduras wishes to point out the dangers of discussing the Central American crisis in various international forums simultaneously, as the Government of Nicaragua has requested, when direct negotiations are already in progress. This viewpoint has also been corroborated by the fact that the United Nations Security Council and General Assembly, and the OAS General Assembly, have sent the Central American issue back to the Contadora Group, to which they give their unconditional support.

Once again the Government of Nicaragua is seeking to flout the Contadora negotiation process by attempting to bring the Central American crisis, essentially a political issue, under the jurisdiction of the International Court of Justice. This is detrimental to the negotiations in progress and fails to recognize the resolutions of the United Nations and the Organization of American States or the full international endorsement that the Contadora peace process has so deservedly received.

Needless to say, the negotiations conducted by the Central American countries within the Contadora Group are expressly authorized by Article 52 of the United Nations Charter and Article 23 of the OAS Charter, which provide for regional settlement of disputes.

The Government of Honduras, without participating or seeking to intervene in any way in the proceedings initiated by Nicaragua against the United States of America in the International Court of Justice, views with concern the possibility that a decision by the Court could affect the security of the people and the State of Honduras, which depends to a large extent on the bilateral and multilateral agreements on international co-operation that are in force, published, and duly registered with the Office of the Secretary-General of the United Nations, if such a decision attempted to limit these agreements indirectly and unilaterally and thereby left my country defenseless.

The Government of Honduras also considers that since the Contadora Group unanimously approved the "document of objectives" of September 9, 1983, which encompasses all the problems related to various aspects of the regional crisis, and since negotiations are in progress between the five Central American countries in the three working commissions created for this purpose, these negotiations must continue without disruption by removal of the matter from this jurisdiction.

In view of the reasons stated above and in consideration of Nicaragua's petition that the Court impose precautionary measures in the proceedings initiated by Nicaragua against the United States of America, I respectfully request that Your Excellency transmit with due urgency to the clerk of the International Court of Justice the text of this note expressing the Honduran Government's concerns about the impact such measures could have on the negotiations in progress and the international security of the State of Honduras.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Annex 26

"THE SITUATION IN CENTRAL AMERICA". NOTE BY THE SECRETARY-GENERAL, UNITED NATIONS DOC. S/16041, 18 OCTOBER 1983

1. Since the Security Council adopted resolution 530 (1983), on 19 May 1983, I have endeavoured to keep in contact with the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, as well as with the Governments of Colombia, Mexico, Panama and Venezuela, which comprise the Contadora Group, in order to keep informed of the efforts made to find a negotiated political solution to the problems in the Central American region and of the developments in the area. On two occasions, on 28 June and 13 July 1983, I reported orally on the situation to the members of the Council.

2. Within the framework of the Declaration adopted at Isla de Contadora on 9 January 1983[1], there was an initial phase of official contacts and visits by the Ministers for Foreign Affairs of the Contadora Group to the countries directly concerned, on 12 and 13 April[2]. As a result of the consultations held, it was agreed to initiate a new phase of joint meetings of the Ministers for Foreign Affairs of the Group with the Ministers for Foreign Affairs of the five Central American countries. The first three meetings were held in Panama City on 20 and 21 April[3], from 28 to 30 May[3] and from 28 to 30 July 1983[4], respectively.

3. On 17 July 1983, the Presidents of Colombia, Mexico, Panama and Venezuela met in Cancún, Mexico. The Declaration issued on that occasion proposed guidelines for the negotiating process as well as specific commitments the implementation of which would ensure peace in the region[5].

4. On the basis of the Cancún Declaration, the Ministers for Foreign Affairs of the Contadora Group and of the five Central American countries met again in Panama City, from 7 to 9 September 1983, and adopted a Document of Objectives[6]. On 6 October, I received a visit from the Minister for Foreign Affairs of Mexico and the Permanent Representatives of Colombia, Panama and Venezuela to the United Nations, who handed me the Document, which, I was informed, had been approved by the Heads of State of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua[7]. At the request of the Contadora Group, the Document is transmitted to the Security Council as an annex[8] to this note.

5. On that occasion, the Minister for Foreign Affairs of Mexico pointed out that the Document of Objectives is a single consensus text, which sets out the positions and the concerns of the Governments directly concerned and the proposals of the Contadora Group, and which contains the principles on which the

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[1] A/38/68.

[2] S/15727.

[3] S/15809.

[4] S/15900.

[5] S/15877.

[6] S/15982.

[7] The texts of the communications from the Governments of Nicaragua and Honduras on this subject were circulated to the Security Council as documents S/16006 and S/16021 respectively.

[8] Not reproduced. *[Note by the Registry.]*

eventual solution of the Central American problems will have to be based. The Document also contains a definition of the specific areas of negotiation and the terms of reference for the formulation of the legal instruments and the machinery which would be essential in order to ensure harmonious coexistence in the region. I expressed to the Minister for Foreign Affairs of Mexico my fervent hope that the Group's activities would soon achieve substantive and concrete results. I also emphasized on that occasion that any attempt at a solution should take into account the profound economic and social imbalances with which the Central American peoples have always struggled.

6. In transmitting the Document of Objectives to the Security Council, I consider it my duty to express my profound concern at the grave and prolonged tension which persists in the area. In view of the nature and possible ramifications of the convulsive situation currently prevailing in the Central American region, the unavoidable conclusion is that it threatens international peace and security.

7. In communications addressed to the President of the Council and to the Secretary-General, there have been frequent accusations and counteraccusations of foreign interference in the region and complaints of numerous border incidents as well as incursions by sea and by air, causing deplorable loss of life and material damage[1]. In the view of some Governments, the military and naval manœuvres now in progress add to tensions in the region. It has also been pointed out that the presence of military advisers and training centres, the traffic in arms and the activities of armed groups, and the unprecedented build-up of arms and of military and paramilitary forces constitute further factors of tension. On 13 September, the Security Council met at the urgent request of a Government of the region, which complained of what it described as a further escalation of acts of aggression against its country[2]. Although the Secretary-General has no way of reliably verifying each and every one of the components of this situation and is therefore unable to make definite judgments, there is no doubt that an alarming picture is emerging in the area.

8. The five Governments of Central America have assured me on a number of occasions of their firm commitment to contribute in good faith to the search for peaceful solutions. In that connection, they have also reiterated their determination to co-operate with the Governments of the Contadora Group in their efforts for peace. The Governments of Colombia, Mexico, Panama and Venezuela are motivated by an earnest desire to find solutions adapted to the realities of the region, without any intrusion derived from the East-West conflict. That is why they have the manifest support of the international community as a whole.

9. In accordance with the terms of resolution 530 (1983), I shall continue to keep the Council informed as and when necessary.

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[1] Documents S/15780, S/15787, S/15806, S/15808, S/15813, S/15816, S/15817, S/15835, S/15836, S/15837, S/15838, S/15839, S/15840, S/15855, S/15857, S/15858, S/15879, S/15893, S/15899, S/15930, S/15952, S/15973, S/15979, S/15980, S/15986, S/15993, S/15995, S/16007, S/16011, S/16012, S/16013, S/16016, S/16018, S/16020, S/16022, S/16024, S/16025, S/16026, S/16030, S/16031, S/16032.

[2] Document S/PV.2477.

Annex 27

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 38/10, ADOPTED 11 NOVEMBER 1983

Abstaining: Australia, Bahamas, Barbados, Chile, Colombia, Fiji, Guatemala, Haiti, Ivory Coast, Jamaica, Malawi, Paraguay.

Absent: Antigua and Barbuda, Belize, Botswana, Burma, Costa Rica, Dominica, Dominican Republic, Equatorial Guinea, Honduras, Iran[1], Liberia, Nigeria, Saint Lucia, Saint Vincent, Seychelles[1], St. Christopher and Nevis, Suriname, Swaziland, Vanuatu, Zaire.

38/10. *The Situation in Central America: Threats to International Security and Peace Initiatives*

Date: 11 November 1983
Adopted without a vote

Meeting: 53
Draft: A/38/L.13/Rev.1

The General Assembly,

Recalling Security Council resolution 530 (1983) of 19 May 1983 in which the Council encouraged the efforts of the Contadora Group and appealed urgently to all interested States in and outside the region to co-operate fully with the Group, through a frank and constructive dialogue, so as to resolve their differences,

Reaffirming the purposes and principles of the Charter of the United Nations relating to the duty of all States to refrain from the threat or use of force against the sovereignty, territorial integrity or political independence of any State,

Also reaffirming the inalienable right of all peoples to decide on their own form of government and to choose their own economic, political and social system free from all foreign intervention, coercion or limitation,

Considering that the internal conflicts in the countries of Central America stem from the economic, political and social conditions obtaining in each of those countries and that they should not, therefore, be placed in the context of East-West confrontation,

Deeply concerned at the worsening of tensions and conflicts in Central America and the increase in outside interference and acts of aggression against the countries of the region, which endanger international peace and security,

Mindful of the necessity of promoting the achievement of peace on a sound basis, which would make possible a genuine democratic process, respect for human rights, and economic and social development,

Noting with deep concern that in recent weeks armed incidents, border clashes, acts of terrorism and sabotage, traffic in arms and destabilizing actions in and against countries of the region have increased in number and intensity,

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[1] Later advised the secretariat it had intended to vote in favour.

Noting with great concern the military presence of countries from outside the region, the carrying out of overt and covert actions, and the use of neighbouring territories to engage in destabilizing actions, which have served to heighten tensions in the region,

Deeply concerned at the prolongation of the armed conflict in countries of Central America, which has been aggravated by increasing foreign intervention,

Bearing in mind the progress achieved in the meetings that the Ministers for Foreign Affairs of the Contadora Group have held with the Foreign Ministers of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua in identifying issues of concern and proposing appropriate procedures for the consideration of those issues,

Recalling the Cancún Declaration on Peace in Central America issued by the Presidents of Colombia, Mexico, Panama and Venezuela on 17 July 1983[1], which contains an appeal for political commitments on the part of countries situated in and outside the region with the aim of achieving lasting peace in the area,

Bearing in mind the Cancún Declaration and the endorsement by the States of Central America of a Document of Objectives, which provides a basis for an agreement on the negotiations, that should be initiated at the earliest possible date with the aim of drawing up agreements and adopting the necessary procedures for formalizing the commitments and ensuring appropriate systems of control and verification,

Appreciating the broad international support expressed for the efforts of the Contadora Group to secure a peaceful and negotiated settlement of the conflicts affecting the region,

1. *Reaffirms* the right of all the countries of the region to live in peace and to decide their own future, free from all outside interference or intervention, whatever pretext may be adduced or whatever the circumstances in which they may be committed;

2. *Affirms* that respect for the sovereignty and independence of all States of the region is essential to ensure the security and peaceful coexistence of the Central American States;

3. *Condemns* the acts of aggression against the sovereignty, independence and territorial integrity of the States of the region, which have caused losses in human life and irreparable damage to their economies, thereby preventing them from meeting the economic and social development needs of their peoples; especially serious in this context are:

(a) The attacks launched from outside Nicaragua against that country's strategic installations, such as airports and seaports, energy storage facilities and other targets whose destruction seriously affects the country's economic life and endangers densely populated areas;

(b) The continued losses in human life in El Salvador and Honduras, the destruction of important public works and losses in production;

(c) The increase in the number of refugees in several countries of the region;

4. *Urges* the States of the region and other States to desist from or to refrain

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[1] A/38/303-S/15877, Annex.

from initiating, military operations intended to exert political pressure, which aggravate the situation in the region and hamper the efforts to promote negotiations that the Contadora Group is undertaking with the agreement of the Governments of Central America;

5. *Notes with satisfaction* that the countries of the region have agreed to take measures leading to the establishment and, where appropriate, the improvement of democratic, representative and pluralistic systems which will guarantee effective popular participation in decision-making and ensure the free access of various currents of opinion to honest and periodic electoral processes based on the full observance of civil rights, emphasizing that the strengthening of democratic institutions is closely linked to evolution and advances achieved in the sphere of economic development and social justice;

6. *Expresses its firmest support* for the Contadora Group and urges it to persevere in its efforts, which enjoy the effective support of the international community and the forthright co-operation of the interested countries in or outside the region;

7. *Welcomes with satisfaction* the Cancún Declaration of the Presidents of Colombia, Mexico, Panama and Venezuela and the Document of Objectives endorsed by the Governments of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, which contains the basis for the start of negotiations to ensure harmonious coexistence in Central America;

8. *Requests* the Secretary-General, in pursuance of Security Council resolution 530 (1983), to keep the Council regularly informed of the development of the situation and of the implementation of that resolution;

9. *Requests* the Secretary-General to submit a report to the General Assembly at its thirty-ninth session on the implementation of the present resolution;

10. *Decides* to keep under review the situation in Central America, threats to security which may occur in the region and the progress of peace initiatives.

Annex 28

UNITED NATIONS SECURITY COUNCIL RESOLUTION 530 (1983), ADOPTED 19 MAY 1983

The Security Council,

Having heard the statement of the Foreign Minister of the Republic of Nicaragua,

Having also heard the statements of various States Members of the United Nations in the course of the debate,

Deeply concerned, on the one hand, at the situation prevailing on and inside the northern border of Nicaragua and, on the other hand, at the consequent danger of a military confrontation between Honduras and Nicaragua, which could further aggravate the existing crisis situation in Central America,

Recalling all the relevant principles of the Charter of the United Nations, particularly the obligation of States to settle their disputes exclusively by peaceful means, not to resort to the threat or use of force and to respect the self-determination of peoples and the sovereign independence of all States,

Noting the widespread desire expressed by the States concerned to achieve solutions to the differences between them,

Commending the appeal of the Contadora group of countries, Colombia, Mexico, Panama and Venezuela, in its 12 May 1983 communiqué (S/15762) that the deliberations of the Council should strengthen the principles of self-determination and non-interference in the affairs of other States, the obligation not to allow the territory of a State to be used for committing acts of aggression against other States, the peaceful settlement of disputes and the prohibition of the threat or use of force to resolve conflict,

Considering the broad support expressed for the efforts of the Contadora Group to achieve solutions to the problems that affect Central American countries and to secure a stable and lasting peace in the region,

1. *Reaffirms* the right of Nicaragua and of all the other countries of the area to live in peace and security, free from outside interferences;
2. *Commends* the efforts of the Contadora Group and urges the pursuit of those efforts;
3. *Appeals* urgently to the interested States to co-operate fully with the Contadora Group, through a frank and constructive dialogue, so as to resolve their differences;
4. *Urges* the Contadora Group to spare no effort to find solutions to the problems of the region and to keep the Security Council informed of the results of these efforts;
5. *Requests* the Secretary-General to keep the Security Council informed of the development of the situation and of the implementation of the present resolution.

DEMANDE EN INDICATION DE MESURES CONSERVATOIRES PRÉSENTÉE PAR LE GOUVERNEMENT DU NICARAGUA

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES SUBMITTED BY THE GOVERNMENT OF NICARAGUA

1. I have the honour to place the following matters before you. On 28 July 1986 the Government of Nicaragua filed its Application instituting proceedings against Honduras in the case of *Border and Transborder Armed Actions*. By reference to that Application and in accordance with the provisions of Article 41 of the Statute and Article 73 of the Rules of Court, the Government of Nicaragua requests the Court to indicate the interim measures of protection appropriate in the circumstances resulting from the recent actions of the Honduran Government directed against the armed forces and territorial sovereignty of Nicaragua.

2. As you will recall, by a joint letter dated 13 August 1987 the Agents of Honduras and Nicaragua had requested the postponement of the oral proceedings in this case in the light of the agreement signed by the Presidents of the two Republics on 7 August 1987. This agreement was the result of certain understandings concerning the dismantling of the bases used by the *contra* forces on the territory of Honduras. It was in these particular circumstances that the joint request for a postponement of the calendar of proceedings was presented to the Court.

3. The accession of my Government to this request was a part of a policy of constructive measures aimed at the implementation of the Esquipulas agreements and the restoration of normal conditions in the region.

4. In fact, in spite of the considerable forbearance shown by my Government in face of the deplorable reluctance of the Government of Honduras to fulfil its undertakings, the situation has remained tense and the facilities afforded to the *contra* forces have not been either withdrawn or even curtailed.

5. The request for interim measures of protection is based upon the following considerations:

(a) The extreme seriousness of the incidents of the period since 16 March involving the resort to force by the armed forces of Honduras (see the incidents of bombing and rocket firing over Nicaraguan territory referred to in the attached protest Notes, which incidents are also matters of public record).

(b) The fact that these incidents were part of activities intended to give support to the *contra* forces in their operations in and against Nicaragua.

(c) The evidence of the intention of the Government of Honduras to co-operate with the United States in measures which have no relation to the security of Honduras and in fact present a threat to the security of Nicaragua.

(d) The absence of any possible justification for the use of armed force on the part of Honduras.

(e) The intimate connection between the events of which Nicaragua now complains and matrix of facts and legal issues set forth in the Application filed by Nicaragua on the basis of which the Court became seized of the case of *Border and Transborder Armed Actions*.

(f) The existence of a real need to preserve the rights of Nicaragua pending the determination of the issues raised by the Application.

6. In the submission of my Government if this request is not granted, the risks of escalation of breaches of the peace in the border region, already substantial, would increase. In particular, the Government of Honduras is at

present inclined to collaborate with the United States in its policy of claiming virtue in public forums whilst ignoring the norms of international conduct on the ground. The indication by the Court of measures appropriate to the circumstances would counteract this policy and induce the creation of a monitoring system which would improve conditions in the border region and put certain allegations made against Nicaragua to the test of truth.

7. The involvement of the United States in the present crisis affecting Nicaragua's border region is obvious. At the same time the Court's Order of 10 May 1984 is still in place and it has been neither withdrawn nor modified in accordance with Article 76 of the Rules of Court. Moreover, the Court reiterated certain key aspects of the Order of 10 May 1984 in its Judgment of 27 June 1986 in the case against the United States. Whilst my Government is very concerned about the recent actions of the United States, involving the emplacement of 3,000 combat-ready troops in the vicinity of the border, in all the circumstances it has decided that a further request for measures directed to the United States would lack point.

8. In accordance with Article 73, paragraph 2, of the Rules of Court the Government of Nicaragua respectfully requests the Court to indicate the following measures of protection:

(a) The making of an enquiry either on the basis of the provisions of Article 50 of the Statute of the Court or on the basis of the provisions of Article 66 of the Rules of Court investigating *in situ* the recent incidents in the Bocay region and the causes of such incidents.

(b) The recommendation by the Court of the creation of a group of observers by the appropriate organ of the United Nations to monitor incidents in the border region.

(c) The right of Nicaragua to territorial sovereignty should be fully respected by Honduras.

(d) The duty of the Government of Honduras to observe the principle of non-intervention in the affairs of Nicaragua and, as a consequence, the duty of that Government to terminate its policy of giving refuge and other forms of assistance to the *contra* forces operating from within its territory.

9. In conclusion, my Government has instructed me to convey to the Court the sense of urgency with which this request is necessarily attended.

The Hague, 21 March 1988.

(Signed) Carlos ARGUELLO G.,
Agent of Nicaragua.

ATTACHMENTS TO THE REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

Managua, March 18th 1988.

To the Right Honorable Carlos López Contreras,
Minister of Foreign Relations of Honduras.

Dear Minister,

Deeply concerned, I address myself to you in order to inform you of the following events:

On March 17th 1988 at 12.00 noon, 2 jets penetrated Nicaraguan airspace from Honduras and launched 5 rockets in the region of Amaka in the border zone between both countries, at the moment when Lieutenant Colonel Javier Carrion, Deputy Chief of the General Staff of the Sandinista Popular Army, was offering a press conference for 31 national and foreign journalists. Such treacherous attack, widely covered by the journalists present at the location of the action, was carried out without any provocation.

That same day, at 16.40 p.m. a jet, also coming from Honduran airspace, attacked the region of San Andres de Bocay in Nicaraguan territory on the border with Honduras with 2 air-to-surface rockets. Soon afterwards, the airplane returned to Honduran airspace.

The Government of Nicaragua presents its most resolute and vigorous protest about these attacks against Nicaraguan territory, which reflect the fact that the Government of Honduras still refuses to conduct its relations with Nicaragua within the framework of international law and the treaties in force. The actions I have referred to are not only extremely grave in themselves but also very dangerous because they occurred at the precise moment when the Government of the United States was spreading an intensive campaign of false accusations against Nicaragua and had sent 3,200 soldiers to the south of Honduras in a manœuvre intended to create the conditions necessary in order to trigger an interventionist adventure against Nicaragua.

The facts I have referred to, when added to the maintenance of tolerance and support by the Government of Honduras for the military and paramilitary activities carried out by mercenary groups at the service of the North American Government from Honduran soil, are more than sufficient and irrefutable proof not only that Honduras has not fulfilled the Esquipulas Agreements by supporting irregular groups and not preventing the use of its territory as a base of aggression against Nicaragua, but that on the contrary, Honduras shows no signs of any determination to fulfil them in the future.

Once again, the Government of Nicaragua invites the Government of Honduras to heed the legitimate interests of the Honduran people and to accept the presence of the UNO Technical Mission in order to carry out an *in situ* investigation as the basis for the procedure necessary for the disarmament and relocation of mercenary groups presently located at the border between Honduras and Nicaragua.

I take this opportunity to assure Your Excellency of my highest consideration.

Miguel D'ESCOTO BROCKMANN,
Minister of Foreign Affairs.

Managua, Nicaragua, March 19th 1988.

To the Right Honorable Carlos López Contreras,
Minister of Foreign Affairs,
Tegucigalpa, Honduras.

Dear Minister,

I address myself to Your Excellency to give an account of the following acts:

On March 18th between 19.00 and 21.00 p.m., a group of approximately 30 mercenaries, proceeding from Honduran territory, penetrated Nicaraguan soil in the sector of the Valle de Torres, 5 kms north-east of Somotillo, map co-ordinates 4508. This group had a confrontation with a Sandinista Popular Army Unit, leading to the consequent death of a member of our army, José Dimas Rodriguez Rios, and the wounding of soldiers Anastasio Sanchez Zamora, Javier Velasquez Poveda, Leonidas Adan Rivera Ramos and Osman Sanchez Corrales. On the side of this terrorist group, two mercenaries died. Considerable military equipment of different kinds was seized. The rest of the group fled towards Honduran territory, through the El Coyol route, at map co-ordinates 4708. This infiltration was openly backed by the Honduran army by way of harassment with gunfire against the Sandinista Popular Army Post located at Palo Grande Viejo, half a km west of Somotillo, at map co-ordinates 35-98-4.

I must also inform Your Excellency, that on March 15th of this year, airplanes proceeding from Honduras committed three violations of Nicaraguan airspace, and after their incursion, returned towards Honduran territory. Similar violations of our national airspace took place in similar conditions on March 16th, 17th and 18th, with 4, 10, and 19 air incursions respectively. All this, amounts to a total of 26 violations of Nicaraguan sovereignty. I must emphasize that on various occasions these incursions were accompanied by attacks on our territory.

In face of these repeated, unjustified and treacherous acts of aggression against the Republic of Nicaragua, I convey to you our resolute and vigorous protest. Simultaneously, I wish to inform you that our Agent at the International Court of Justice has been instructed to request immediately that this institution of justice indicate the interim protective measures to be taken in the case concerning *Border and Transborder Armed Actions* initiated by the Republic of Nicaragua.

Such decision constitutes yet another proof that the Government of Nicaragua, faithful to its obligation to seek for peaceful solutions to those situations which threaten international peace, opts for means of settlement of differences to which it is obliged to resort under the agreements contained in the United Nations Charter and the Bogotá Pact. Similar motivations are derived from my country's deep concern for the establishment of a just and long-lasting peace in the region: a peace that your Government insists on endangering in an unjustified and irresponsible manner.

I take this opportunity to assure Your Excellency of my highest consideration.

Miguel D'ESCOTO BROCKMANN,
Minister of Foreign Affairs.

Managua, Nicaragua, March 19th 1988.

To the Right Honorable Carlos López Contreras,
Minister of Foreign Affairs,
Tegucigalpa, Honduras.

Dear Minister,

Once again I am obliged to address myself to Your Excellency, in order to report the following attacks:

Today, March 19th, between 08.00 and 08.30 a.m., two F5 airplanes originating in Honduran territory flew over the regions of Mukuwas, San Andres de Bocay, Waniwas and Wayawa, located approximately 12 kms inside Nicaraguan territory, and they proceeded to bomb and machine-gun these locations.

Later, between 14.35 and 14.45 p.m., two F5 airplanes again flew over the region of Amara and Bocay located 8 kms inside Nicaraguan territory. They dropped 4 bombs on Sandinista Popular Army positions in these zones. Subsequently, the planes returned to their sanctuary inside Honduran territory.

The Government of Nicaragua vigorously and formally protests in view of this series of aggressions against Nicaraguan territory, to which should be added the illicit bombings, attacks and air raids which I have already denounced in the notes addressed to you yesterday and this morning.

These facts clarify the meaning of the announcement made yesterday by President Azcona, when in a press conference he stated "The nearest available resource we have is the Air Force, and we will use it again in the future, should it be determined that the Sandinistas have not left our territory . . .". In fact, what President Azcona was announcing beforehand, was the bombing of Nicaraguan territory, since there is no indication of any Sandinista "invasion" of Honduran soil. Therefore, in order to fulfil his words, he could only have meant — as indeed happened — that the target would be our national territory.

These new attacks confirm the justice of the action of the Republic of Nicaragua, in requesting for the common benefit of both our peoples, that the International Court of Justice impose an interim protective order in the case introduced by Nicaragua. The Government of Honduras must be convinced that only respect for International Law can provide an effective framework for relations between neighbouring countries.

I take this opportunity to assure Your Excellency of my highest and most distinguished consideration.

Miguel D'ESCOTO BROCKMANN,
Minister of Foreign Affairs.

PRESIDENT DANIEL ORTEGA'S MESSAGE TO THE NICARAGUAN PEOPLE

(Unofficial translation)

Managua, 19 March 1988.

Yesterday, Nicaragua presented our denunciation to the United Nations Security Council. In recent days, we have learned of actions throughout the world rejecting and condemning the aggressive and terrorist policy of the US Government. We have particularly noted, and are hearing more about, the North American peoples' repudiation of this policy. They are demanding the withdrawal of US troops dispatched to Honduras that are threatening our country, our sovereignty, our lives and security.

The attitude maintained by the Nicaraguan Government towards Central American Governments and, in particular, towards the Honduran Government is well known.

Nicaragua has a claim against Honduras before the World Court of Justice at The Hague for allowing military, paramilitary, and terrorist activities of US Government mercenary forces to be launched from Honduran territory against the Nicaraguan people. This has been going on for more than seven years. The Honduran Government has been complicit in these criminal activities that have brought about more than 50,000 victims in the Nicaraguan population.

When the Esquipulas accords were signed on 7 August 1987, the President of Honduras, Don José Azcona, asked me to request a postponement of the public presentation of our case before the World Court. He requested this postponement until the second summit meeting of Presidents, set to take place 150 days after the date the accords were signed.

In exchange, President Azcona insisted on his word, his readiness to remove the mercenaries from Honduras. He committed himself to take the corresponding steps in those 150 days to dismantle the camps, radios, communication centres, and logistical bases that the Reagan administration's mercenary forces have in Honduras. In view of the commitment from the Honduran President in that Esquipulas meeting in Guatemala, I accepted the postponement of our case before the World Court. That is to say, I accepted the postponement of the public presentation of the case. In a letter signed by both myself and President Azcona, we communicated this to the World Court. This letter was made public when we informed the world of the Esquipulas II Accords.

This commitment expired two months ago, and still the Honduran Government has not taken a single step in order to comply with the agreement made then. The Honduran Government has not taken a single step to remove the counterrevolutionaries occupying Honduran territory in order to attack Nicaragua. President Azcona has not fulfilled his commitment.

On the contrary, the Honduran Government has refused to receive the Technical Commission of the UN and OAS that was sent by the CIVS in November 1987. They have systematically refused to comply with the commitment made in August 1987 and reaffirmed in January of 1988 to allow on-site inspection. They have said it in words, at the end of 1987 the Honduran Government said they were ready for on-site inspection but when the necessary steps are taken to proceed with inspection, Honduras has not allowed the process to be carried out.

The Honduran Government has refused to demand of the United States Government, who is mainly responsible for all these problems, that they with draw their mercenaries from Honduran territory. The Honduran Government has not even dared to denounce that this presence constitutes a violation of the sovereign will of the Honduran people, and the very sovereignty of Honduras. It is an act of intervention by the United States in Honduras. In view of these facts, and taking into account that Honduras is already rejecting the proposal for the commission sent by the UN Secretary-General to go to Honduran territory, Nicaragua has no alternative but to reactivate our case before the World Court.

Nicaragua finds itself in the situation of calling on international legal order, not calling foreign troops as has been imposed on Honduras to lend itself to the escalation of war against Nicaragua, rather, calling on the aid of international law. There is no other alternative for the Nicaraguan Government except to reactivate the legal process against the Honduran Government. This is a legal process, as I explained, that we had agreed to momentarily detain for a period of 150 days from the date on which the Esquipulas Accords were signed.

In light of the complicity and active participation of the Honduran Army in bombings and acts of aggression promoted by the United States Government (who have transferred troops to Honduran territory) and without underestimating the threats of President Don José Azcona to carry out new bombings and ask for more US "support", I am giving the necessary instructions to our representative before the World Court to immediately request interim protective measures from the Court. Our aim will be to request that the Court order a cessation of any military activity that could make relations between Honduras and Nicaragua even more tense and put international peace in jeopardy.

In taking this step within the framework of international laws, Nicaragua is once again defending international legal order. We know that the people of Honduras, our brothers, are not in agreement with this policy that is already affecting the sovereignty of Honduras, that has provoked destabilization in towns along the Honduran border with Nicaragua, where the mercenary camps have been established. And we are sure that the people of Honduras will understand and comprehend this step by our Government of appealing to the World Court. We do so to ensure that the conflict is not aggravated, to ensure that Honduran and Nicaraguan blood will not be shed as a product of those confrontational manœuvres that the United States is now promoting to intervene against the Nicaraguan people.

I also want to call on the Honduran President, Don José Azcona Hoyo, and the armed forces of Honduras not to lend themselves to these actions that put the security of Honduras and Nicaragua at risk, that put the security and peace of Central America and the world at risk. There is still time to reconsider, reflect, and rectify. I invite President Azcona to receive the commission that the UN Secretary-General, in co-ordination with the OAS Secretary General, is sending to inspect on site Nicaraguan territory that borders Honduras, as well as Honduran territory that borders Nicaragua.

Let the Honduran President and the armed forces of Honduras take the corresponding steps to disarm and dismantle the mercenary camps and bases in Honduras. By doing this, they will be contributing to peace and they will be respecting international legal order. Under these conditions, there would be no need to continue our case in the World Court against the criminal acts of the Honduran Government.

The Central American and international communities recognize that the principal and only responsible party for all these acts is the United States Government. That Government has already been condemned by the World

Court. The World Court has already said that the United States Government must cease its terrorist acts, its aggressions against the Nicaraguan people. And the United States President, if he really wanted to be respectful of international legal order, President Ronald Reagan, if he really wanted to be respectful of the accords signed by the Central American Presidents on 7 August in Guatemala should order the immediate withdrawal of US troops from Honduran territory. But, above all, he should cease his aggressive and terrorist policy against the Nicaraguan people and leave us to continue developing the peace process in Central America. In Nicaragua we are continuing with the national dialogue. We will go forward with the meetings planned for Monday in Sapoá with the mercenary groups to discuss in detail the theme of cease-fire. The United States should also be willing to dialogue, to discuss with Nicaragua. In those discussions we could reach an agreement on security issues.

In these moments brothers, when our people, our nation is once again threatened by the arrogant and aggressive policy of the US Government, we must maintain the alert, the combat mobilization until this situation is surpassed. We thank our brothers and sisters around the world for the demonstrations of solidarity that we have been receiving from all parts of the globe. In particular, we thank the people of the United States who today are being repressed in the streets, are being clubbed by the US police simply because they demand that the United States, that the Reagan Administration stop trying to turn Central America into another Vietnam. The people of the United States want to prevent the massive bloodshed of Central American and North American people.

We extend our recognition and salute to those people, in the United States in particular, who have joined us in the battle we wage today for peace and for a future of friendly relations between our two nations.

LETTER FROM THE AGENT OF NICARAGUA TO THE REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE NOTIFYING THE WITHDRAWAL BY THE GOVERNMENT OF NICARAGUA OF ITS REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

31 March 1988.

Dear Sir,

I have the honour to refer to the case concerning *Border and Transborder Armed Actions (Nicaragua* v. *Honduras)*.

I have been instructed by my Government to make the following communication to the Court.

The Deputy Minister of Foreign Affairs of Nicaragua, Dr. Jose Leon Talavera, was expressly charged with delivering to the Ministry of Foreign Affairs of Honduras, of the letter dated March 28, 1988 that President Ortega addressed to President Azcona, and of which the Court was furnished with a copy.

On occasion of that meeting, Deputy Minister Talavera was given assurances by the Honduran authorities that the troops of the Government of the United States that had recently been sent to that country were being withdrawn. He was also told that due to the Easter celebrations President Azcona was away from his ordinary round of duties and for that reason they requested a prudential period of time to respond to President Ortega's letter.

For the reasons stated above, and particularly in view of the formal assurances given by the Government of Honduras — that have begun to be put into effect — of proceeding to the withdrawal of the troops of the United States that were the principal reason for the urgent request made by Nicaragua to the Court, my Government has given me instructions to withdraw the request of interim measures of protection that had been requested from the Court on March 21 of this year.

With respect to the other considerations in President Ortega's letter, my Government considers it convenient — in view of the explanations given by the Honduran authorities — to await the reply of President Azcona at his return.

Accept, Sir, the assurances of my highest consideration.

(Signed) Carlos ARGUELLO G.,
Agent of the Republic of Nicaragua.

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